No. 77. October Term, 1902.

Brf. of Johnson for Appellees

Office Supreme Court U. S.
FILED
NOV 6 1902
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

Filed Nov. 6, 1902.

IN EQUITY.

William E. Hale, as Receiver for the Collection and Enforcement of the Liability of Stockholders of the Northwestern Guaranty Loan Company, Complainant below and Appellant,

vs.

Edward P. Allinson *et al.*, Respondents below and Appellees.

BRIEF FOR APPELLEES.

[Record No. 18,106.]

JOHN G. JOHNSON.

Allen, Lane & Scott, Pro. Phila.

IN THE SUPREME COURT OF THE UNITED STATES.

IN EQUITY.

William E. Hale, as Receiver for the collection and enforcement of the liability of stockholders of the Northwestern Guaranty Loan Company, Complainant below and Appellant,

vs.

Edward P. Allinson et al., *Respondents below and Appellees.*

October Term, 1902.
No. 77.
[Record No. 18,106.]

APPELLEES' BRIEF.

The present controversy arises out of an attempt in Pennsylvania, by a Receiver who had been appointed by a District Court of Minnesota in a suit which was there instituted by the creditors of an insolvent Minnesota corporation, in which the corporation, the Receiver of its assets and certain resident stockholders were made parties, to collect, from Pennsylvania stockholders not parties to the original suit, an amount equal to the par value of their shares. The Minnesota law imposed a double liability, in case of insolvency, upon the stockholders of corporations. The proceedings in Pennsylvania were by bill in equity. It was claimed therein, that the Minnesota suit finally concluded the appellees, though not parties thereto, as to the amount payable by the holder of each share, though such amount could only be determined judicially, by ascertainment of the indebtedness of

the corporation, the value of its assets and the aggregate and *personnel* of stock contributors.

The liability of holders of shares of certain Minnesota corporations to pay, in case of insolvency, to an amount not in excess of the par value of the shares respectively held by them, such of its indebtedness as cannot be liquidated out of its assets, was created by the Constitution of Minnesota, which thus provides (article X., section 3):—

> "Each stockholder in any corporation (excepting those "organized for the purpose of carrying on any kind of "manufacturing or mechanical business), shall be liable "to the amount of stock held or owned by him."

The Statutes of Minnesota of 1894 (chapter 76, page 1595), thus provide the method of enforcing the liability of stockholders:—

> "(Section 9, section 5897.) Whenever a judgment is "obtained against any corporation incorporated under the "laws of this State, and an execution issued thereon is "returned unsatisfied in whole or in part, upon the com-"plaint of the person obtaining such judgment, or his "representatives, the district court within the proper "county may sequestrate the stock, property, things in "action and effects of such corporation, and appoint a "Receiver of the same."
>
> "(Section 17, section 5905.) Whenever a creditor of "a corporation seeks to charge the directors, trustees "or other superintending officers of such corporation, or "the stockholders thereof, on account of any liability "created by law, he may file his complaint for that pur-"pose in any district court which possesses jurisdiction "to enforce such liability.
>
> "(Section 18, section 5906.) The court shall proceed "thereon, as in other cases, and, when necessary, shall "cause an account to be taken of the property and debts "due to and from such corporation, and shall appoint "one or more Receivers.
>
> "(Section 19, section 5907.) If, on the coming in of the "answer or upon the taking of any such account, it ap-"pears that such corporation is insolvent, and that it has "no property or effects to satisfy such creditors, the court

"may proceed, without appointing any receiver, to ascer-
"tain the respective liabilities of such directors and stock-
"holders and enforce the same by its judgment, as in
"other cases.

"(Section 20, section 5908.) Upon a final judgment in
"any such action to restrain a corporation or against di-
"rectors or stockholders, the court shall cause a just and
"fair distribution of the property of such corporation and
"of the proceeds thereof to be made among its creditors.

"(Section 21, section 5909.) In all cases in which the
"directors or other officers of a corporation, or the
"stockholders thereof, are made parties to an action in
"which a judgment is rendered, if the property of such
"corporation is insufficient to discharge its debts the
"court shall proceed to compel each stockholder to pay
"in the amount due and remaining unpaid on the shares
"of stock held by him, or so much thereof as is neces-
"sary to satisfy the debts of the company.

"(Section 22, section 5910.) If the debts of the com-
"pany remain unsatisfied, the court shall proceed to
"ascertain the respective liabilities of the directors or
"other officers and of the stockholders, and to adjudge
"the amount payable by each, and enforce the judgment,
"as in other cases.

"(Section 23, section 5911.) Whenever any action is
"brought against any corporation, its directors or other
"superintending officers or stockholders, according to the
"provisions of this chapter, the court, whenever it appears
"necessary or proper, may order notice to be published,
"in such a manner as it shall direct, requiring all the
"creditors of such corporation to exhibit their claims
"and become parties to the action, within a reasonable
"time, not less than six months from the first publication
"of such order, and, in default thereof, to be precluded
"from all benefit of the judgment which shall be rendered
"in such action, and from any distribution which shall
"be made under such judgment."

The Northwestern Guaranty Loan Company, a Minnesota corporation, was adjudged insolvent by appropriate proceedings on the twentieth day of May, 1893. A Receiver of its assets was duly appointed under the above statutes.

One Rogers obtained judgment in November, 1893, against the insolvent corporation, and, shortly thereafter, filed a bill in

equity in the District Court of Hennepin County, Minnesota, against the Northwestern Guaranty Loan Company and its Receiver, and against certain resident stockholders. The appellees were not made parties to these proceedings, and it does not appear that any notice of the same was ever given to them until a bill was filed in the Circuit Court of the Eastern District of Pennsylvania.

The Minnesota proceedings were amended from time to time, and several decrees, two interlocutory and a third, alleged to be final, were entered. The dates of these interlocutory decrees were 27th March, 1896, and February, 1897; that of the so-called final decree was 3d November, 1897.

Before the latest decree was entered, about eight hundred creditors intervened and made proofs of their claims.

The Minnesota bill prayed as follows (Record, page 33):—

> "*First.*—That the court decrees notice to be given in "such manner as shall be deemed best, requiring all the "creditors of said defendant, Northwestern Guaranty "Loan Company, to exhibit their respective claims "against the said Northwestern Guaranty Loan Com- "pany herein, and to become parties to this action within "a reasonable time, and that they, in default thereof, be "precluded from all benefit under the judgment which "may be rendered in this action and from any dis- "tribution which shall be made under said judgment "herein; that thereupon the court proceed to ascer- "tain the amounts of the respective claims of such "creditors of said defendant Northwestern Guaranty "Loan Company who shall become parties to this "action, as well as the respective liabilities of said de- "fendant stockholders, on account of their constitu- "tional liability, and the amount of stock held and owned "by them and each of them. And plaintiff further prays "that a proper judgment and decree be entered and "rendered herein against said defendant stockholders "and each of them, for such liabilities as shall be war- "ranted by the law and the evidence, and providing for "the enforcement and sequestration of said liabilities, to "the end that from the proceeds therefrom the attorneys' "fees and the cost of this proceeding be paid in full, and "that said claims of said creditors be satisfied *pro tanto.*

"*Second.*—That the Minneapolis Trust Company, or "some other competent and suitable person, be appointed "Receiver herein, for the purpose of enforcing and col- "lecting such liabilities, and with power and authority to "proceed against said defendant stockholders residing in "other jurisdictions in such other jurisdictions, for the "purpose of enforcing their liabilities on behalf of all the "creditors who shall become parties to this action, and "with further power and authority to distribute the pro- "ceeds in this proceeding between the parties entitled "thereto, after first paying in full out of said proceeds "such reasonable sum as shall by the court be allowed "this plaintiff for compensation for his attorneys for their "services in this proceeding, as well as for all other costs "and expenses herein incurred, not taxable against said "defendants.

"*Third.*—That by a proper judgment and decree herein, "all creditors of said defendant the Northwestern Guar- "anty Loan Company, who have not within the time "fixed by the court herein, exhibited their claims herein "and become parties to this action, be forever de- "barred from any and all benefits of the judgment herein, "and from any distribution to be made under the same.

"*Fourth.*—Plaintiff prays for such other and further "relief herein as to the court shall seem meet and proper, "just and agreeable with equity and good conscience, "including judgment for his costs and disbursements "herein."

By the so-called final decree, it was found that the Northwestern Guaranty Loan Company, a Minnesota corporation, had been duly adjudged insolvent on the 20th May, 1893, and that a Receiver of its assets had been duly appointed; that its total issue of capital stock consisted of twelve thousand five hundred shares of the par value of $100 per share, all whereof were outstanding at the date of the adjudication of insolvency; that said shares were respectively held and owned, to the extent therein specified, by certain resident stockholders, parties defendant; that the total aggregate value of the entire corporate assets applicable to the payment of the corporate indebtedness of the Loan Company, was $440,000, and no more; that the

amount of the principal of the outstanding valid subsisting indebtedness of such Loan Company, at the date of the adjudication of insolvency, was, and still remained, $2,543,689.29; that all of said indebtedness at said date and at the entry of the decree was held by the plaintiff and the several intervening plaintiffs who were therein specified, the amount due to each being specially fixed; that the maximum liability imposed by the Constitution and laws of Minnesota upon corporate stockholders should be imposed and enforced as against each and every stockholder of said Loan Company holding stock therein as of the date of adjudication of insolvency; that each of such stockholders was liable for and should pay and contribute to and for the equal benefit of the ascertained creditors of the said corporation, the sum equal to the par value of the stock held by him at the date of said adjudication of insolvency; that all the stockholders of the said Loan Company, together with their several holdings and the amount for which each was severally liable to contribute, were as set forth in the schedule thereto attached; that each of the creditors therein named should severally recover from the Loan Company the several sums set opposite their respective names; that the creditors therein ascertained should have and recover from the resident stockholders, parties defendant, the respective sums therein specified; that execution upon any or all of said judgments should, upon the application of a Receiver to be appointed, be issued in the name of the above-named creditors, and that any and all funds thereon realized should be paid to said Receiver, to be held by him and disbursed by order of the said District Court.

It was further decided (Record, page 86):—

> "*Tenth.*—That for the purpose of enforcing and collect-
> "ing said judgments and all thereof and any and all lia-
> "bility thereon or in anywise incident thereto, and any
> "and all liability upon the part of non-resident stock-
> "holders of said Northwestern Guaranty Loan Company,
> "against whom no personal judgment for the ascertained
> "liability is herein rendered, and disbursing the amounts
> "so collected as hereinafter provided, W. E. Hale, Esq.,

"has been by the order of this court appointed Receiver, "and has given bond in the sum of $25,000, and qualified "as such Receiver.

"That by the terms of said order of appointment said "Receiver was and is hereby authorized, empowered and "directed to take any and all appropriate or necessary "steps or proceedings for the purpose of collecting the "judgments herein rendered, and was and hereby is au- "thorized, empowered and directed to take any and all "necessary and appropriate steps or proceedings against "the non-resident stockholders of said defendant, North- "western Guaranty Loan Company, against whom no per- "sonal judgment herein has been ordered, for the enforce- "ment and realization upon their aforesaid stockholders' "liability, and to that end said Receiver be, and hereby is "authorized, empowered and directed to institute and "prosecute all such actions or proceedings in foreign juris- "dictions as may be necessary or appropriate to this end."

It was further decided (Record, page 87):—

"*Fourteenth.*—That any and all moneys collected by said "Receiver be held by him, subject to the further order of "this court in the premises.

"*Fifteenth.*—That this court retain jurisdiction of this "cause until adjustment of all and several the rights and "liabilities of the respective parties hereto."

A bill in equity in the United States Circuit Court for the Eastern District of Pennsylvania, against certain Pennsylvania stockholders, was instituted by W. E. Hale, as Receiver, which prayed that each of said defendants (Record, page 13) "be "adjudged liable to pay and contribute to the extent of the "par value of their several holdings of stock for the equal "benefit of the creditors of said corporation." Demurrers were filed by the various defendants which raised the questions which will be discussed in this brief. The Circuit Court sustained the demurrers because of the lack of equitable jurisdiction. The Circuit Court of Appeals affirmed this ruling upon the same ground, but intimated its opinion that the proceedings in Minnesota were not binding upon stockholders

in Pennsylvania not parties thereto, and that the Minnesota Receiver was not authorized to maintain suit in Pennsylvania.

In support of the decree entered in the court below, we submit four propositions:—

I. Upon the appellant's theory that the Minnesota proceedings finally fixed the amount to be paid by the holder of each share, there was no equitable jurisdiction of appellant's demand and no joint cause of action.

II. The Minnesota statutes provided a statutory remedy which was exclusive, which did not permit the proceedings instituted in Pennsylvania.

III. Inasmuch as the appellees were not parties to the proceedings in Minnesota, they were not bound by the same.

IV. An action cannot be maintained in the courts of one jurisdiction by a Receiver appointed in another jurisdiction merely to bring suit, who is not clothed with title to the *rem* in controversy.

I. Upon the appellant's theory that the Minnesota proceedings finally fixed the amount to be paid by the holder of each share, there was no equitable jurisdiction of appellant's demand and no joint cause of action.

It is not pretended by the appellant that the Minnesota proceedings were conclusive against the defendants as to (1) the fact of their being holders of shares to the amount designated, or (2) as to the fact of non-payment of their additional liability. He contended, however, that said proceedings were conclusive (1) as to the amount of the corporation indebtedness; (2) as to the amount and value of the corporation assets first applicable in payment thereof; (3) as to the total amount of outstanding shares which could be called upon for contribution; (4) as to the extent of the holdings of the resident

shareholders actually served in Minnesota; and (5) as to the amount to be paid on account of each share.

The theory upon which the appellant proceeded in the Circuit Court of Pennsylvania was, that the Minnesota proceeding had finally determined every question, saving whether the defendants in Pennsylvania were respectively stockholders and, if they were, whether they had made payment of their liability.

Before discussing the question of whether or not his demand was one which could be enforced in a court of equity, it may be well to consider (1) what was claimed by the bill, and (2) the theory of law as to the scope of the defense and the rights of the complainant upon which it was rested.

FIRST.—*As to what was claimed by the bill.*

It averred that the forty-seven defendants were respectively holders, to the extent in each case designated, of shares of stock of The Northwestern Guaranty Loan Company, a corporation of Minnesota; that twelve thousand five hundred shares at the par value of $100 per share had been issued; that on the twentieth day of May, 1893, the corporation had been duly adjudged insolvent and a Receiver of its corporate assets had been appointed; that since that date it had not had, or conducted, any business; that in the course of its business it had contracted indebtedness to an extent of upwards of $3,000,000; that under and by virtue of the Constitution and general laws of Minnesota each stockholder assumed personal and contractual liability for the indebtedness of the corporation to the amount of the par value of his full holdings of stock for the equal and common benefit of the corporate creditors, to be enforced in proceedings, as indicated by the general statutes of the State; that on or about the first day of November, 1893, an unsatisfied judgment creditor of said company, after a return of an execution thereon unsatisfied, had filed in a District Court of Minnesota County a bill in equity on behalf of himself and all other creditors of said Loan Company against it and against all and

several, the stockholders thereof, for "the purpose of enforc-
"ing the aforesaid liability of such stockholders and to that
"end amongst others for an accounting of the debts and assets
"of said corporation, the ascertainment of the deficiency, the
"apportionment and assessment of such deficiency, amongst
"the several stockholders, and for the appointment of a Re-
"ceiver for the purpose of enforcing and collecting such as-
"sessment or ascertained liability all and several;" that process had been duly served on said corporation and such of the stockholders thereof as resided within the State of Minnesota; that no service had been made upon the defendants; and that said District Court, on the eighth day of February, 1897, had adjudged, *inter alia*, the following matters, viz., that an indebtedness of upwards of $3,000,000 was owing by said Loan Company to its several creditors, that the value of the total assets and properties of the company was $450,000 and no more, that the total outstanding stock of the company was twelve thousand five hundred shares at the par value of $100 each, that the names of the several stockholders, including defendants, and the amount of stock held by each were as specified, that each stockholder was liable to contribute, for the common benefit of the creditors, an amount equal to the par value of the stock held by him, that each of the stockholders within the State of Minnesota should pay and contribute a sum equal to the par value of the stock held by him, that W. E. Hale was appointed Receiver for collecting and enforcing, for and in behalf of all the creditors, the judgments against such Minnesota stockholders and for the purpose of collecting, by such proceedings as might be proper, the ascertained liability of non-resident stockholders of said Northwestern Guaranty Loan Company, over whom the court, by reason of non-residence, had not acquired jurisdiction for the purpose of rendering personal judgment, that said funds thus collected were to be held by the Receiver for the purpose of equal *pro rata* distribution amongst the creditors subject to the further order of the court, and that the court would retain jurisdiction of the cause for the purpose of making other and further orders or decrees in the matter of distribution and otherwise, as

might be necessary to protect the rights of the several parties in the premises.

The bill averred thus (Record, page 13) :—

> "The decree hereinbefore recited ascertaining the necessity for and amount to which stockholders should contribute, is conclusive in that regard on all stockholders of said corporation; that said decree cannot be executed without and beyond the limits of the jurisdiction of the State of Minnesota without the aid and interposition of equity in enforcing said decree in or by ancillary proceeding; that the several defendant stockholders herein are liable to contribute to a fund on behalf of the creditors of said corporation in amounts equal to the par value of their respective holdings of stock."

It prayed as relief (Record, page 13) :—

> "That said defendants and each of them, may, if they can, show cause why they and each thereof should not be adjudged liable, to pay and contribute to the extent of the par value of their several holdings of stock for the equal benefit of the creditors of said corporation."

It will be observed the bill did not claim it was filed to avoid a multiplicity of suits; nor that there were any grounds of defense common to all the defendants. On the contrary, it averred that the proceedings in Minnesota concluded the defendants, and that to the extent they were holders of shares it was their duty to pay, because it had been so adjudged, an amount equal to the par value thereof. It prayed against each, a decree of payment of an amount equivalent to the par value of the shares by him, or her, held. It amounted to nothing more than an attempt to collect, in one suit against all the stockholders, the amount which it was claimed, each was separately obliged to pay. Upon its theory, there was no possibility of a defense other than one special in the case of each stockholder.

SECOND.—*The theory of law as to the scope of the defense and the rights of the complainant upon which the bill rested.*

The appellant rested his bill upon the decision in Hale *vs.* Hardon, 95 Fed. Rep., 747, 754, averring that the law quoted therefrom was correctly stated:—

> "The ascertainments of the debts and assets of the "corporation and the judgments against the resident "stockholders in the parent forum are in no sense per- "sonal judgments against the non-resident stockholders, "but are necessary preliminaries to a recovery in an extra- "territorial proceeding against the non-resident stock- "holders. To enforce, extra-territorially, the individual "stockholder liability created by statute, and to entitle "the creditors, or the parties representing them, to judg- "ment, it is incumbent upon plaintiffs to show that the "ascertainments intended by the statute have been made. "* * * But such constitutional and statutory liability "in contemplation of law is conditioned upon certain "equitable proceedings, which, speaking generally, mean "proceedings to ascertain all the indebtedness, property "and assets of the corporation, to pay out of the assets, "if possible, and if not possible to pay all, to ascertain "how far the assets will go and the relation which "the remaining indebtedness sustains to the maximum "liability of all stockholders, or perhaps of all solvent "stockholders; and in order to recover upon the liability "it must be shown that the contemplated statutory con- "dition has been performed. * * * As to these as- "certainments in which the corporation is interested, in "a proceeding in which the corporation or its successor "is a party and for such purposes representing the stock- "holder, who is a part of the corporation, the stockholder "is bound by the adjudications in Minnesota. * * * "The Minnesota law was a part of the contract which "resulted from the defendant becoming a stockholder, "and as a stockholder, he is bound by such equitable "and legal proceedings in the local courts, and such as- "certainments as to purely corporate matters, as the "statute contemplated. As a part of the implied con- "tract the stockholder agreed that the ascertainments, "which the statute intended and which the situation re- "sulting from insolvency required, should be made in "accordance with the usual and ordinary course of legal

"and equitable procedure in that State. It was not un-
"derstood that the statutory liability should have no force
"unless the non-resident stockholder was made a party
"to the proceedings as to corporate affairs which the
"statute intended and expressly provided should be had
"in the District Courts of Minnesota. Making a nonl
"resident stockholder a party to the contemplated lega-
"and equitable proceeding for such purposes was a thing
"impossible, and a construction requiring it would render
"the statutory liability inoperative at its inception. * * *
"We have no hesitation in holding that the findings and
"decrees of the Minnesota court as to the amount of
"corporate indebtedness, and the amount of indebtedness
"proven or established in the parent proceeding, and
"that the findings and decree as to the rights of the
"creditors are evidence in the proceeding at bar against
"a stockholder, although no service was made upon him,
"or notice given of the proceeding in Minnesota; and
"we have no hesitation in saying that the doctrine is
"established upon principle and by an overwhelming
"weight of authority (which, among other considerations,
"involves the idea of the constitutional guaranty that full
"force and credit shall be given to the judicial proceed-
"ings of every State, and also of enforcement according
"to the law of the home forum), and that such findings,
"judgments and decrees are conclusive, in the absence
"of fraud or collusion.

"* * * The fact was also found below that the de-
"fendant was a stockholder at the date of the adjudica-
"tion of the insolvency of the corporation; and as our
"conclusion is that the proceedings in Minnesota were
"sufficiently comprehensive as to domiciliary adjudica-
"tions and ascertainments, and such as the Constitution
"and statutes of Minnesota contemplated, and such as the
"statutes required, it follows that the defendant's liability
"results by force of the constitutional provision and the
"statutes in respect to which he, by implication, con-
"tracted by becoming a stockholder, and that the plaintiff
"is entitled to recover, provided he is entitled to main-
"tain his action in this jurisdiction as a Receiver or repre-
"sentative of the creditor interests in aid of the parent
"proceeding in Minnesota."

Appellant further quoted from what was decided by the Supreme Court of Minnesota in Hanson *vs.* Davison, 76 N. W. Rep., 254, to this effect:—

"Equitable considerations and the statute require that "an action of the character prescribed by chapter 76 be "brought by and on behalf of all the creditors, and "against the corporation and all of the stockholders of "whom the court has jurisdiction, to determine the "amount remaining due to such creditors, respectively, "after the assets of the corporation have been exhausted; "thereby providing a basis for determining the extent of "the liability of the respective stockholders. The judg- "ment in such original action determining the amount of "the corporate debts remaining unpaid, is binding on all "of the stockholders, whether parties to the action or not, "unless impeached for fraud. A judgment against the "corporation is in effect a judgment against the stock- "holders in their corporate capacity. They are repre- "sented by the corporation in the action. In principle, "there can be no difference in this respect between an "action to enforce an unpaid subscription and one to en- "force a stockholder's liability. The action required to "be brought by chapter 76 is the original action for the "sequestration and distribution of the fund to be derived "from the stockholder's liability, and the decree entered "therein is a final and conclusive determination of the "amount (unless impeached for fraud) for which the "stockholders are liable—not exceeding the maximum "limit of liability as fixed by law. As the amount and "par value of the stock issued and outstanding is a matter "of record, and readily proven in any action, there is "nothing to prevent the prosecution, after such decree is "entered, of an ancillary action in another jurisdiction by "the Receiver appointed to collect and distribute its funds "arising from stockholders' liability in the original "action, or by any other party or person who may be ap- "pointed by the court for that purpose, against any stock- "holder who was not made a party to the original action, "to collect from him the amount of his liability on ac- "count of the debts of the corporation, for the benefit of "all the creditors."

He claimed that what was said by this court in Hancock National Bank *vs.* Farnum, 176 U. S., 640, concerning the effect of a finding, as against the corporation itself, of a fact which when thus found was binding upon all interested in the corporation, is applicable to a case in which a fact was found

as against stockholders, not concerning assets of the corporation, but concerning a matter relevant only *quâ* the liability of stockholders to creditors. He therefore quoted, as the law of his case, what was there said in these words:—

"We do not mean that it is conclusive as against any "individual sued as a stockholder that he is one, or if one, "that he has not already discharged by payment to some "other creditor of the corporation the full measure of his "liability, or that he has not claims against the corpora- "tion, or judgments against it, which he may, in law or "equity, as any debtor, whether by judgment or otherwise, "set off against a claim or judgment, but in other respects "it is an adjudication binding him. He is so far a part "of the corporation that he is represented by it in the ac- "tion against it. Ball *vs.* Reese, 58 Kan., 614. In that "case it was said, correcting an inference which was "sought to be drawn from language in the case of Howell "*vs.* Manglesdorf, 33 Kan., 194, in respect to the effect of "a judgment against a corporation (pages 617-618):—

"'The general holding in this court has been that a "'judgment is final and conclusive between the parties and "'their privies; and we think it must be held that every "'stockholder in a corporation is so far privy in interest "'in an action against the corporation that he is bound by "'the judgment against it. In the absence of fraud and "'collusion, the judgment must be held to be final and "'conclusive against the stockholder if the court render- "'ing it has final jurisdiction. As the judgment was valid, "'the court committed error in allowing the defendants "'to go behind it and contest matters which were con- "'clusively settled by the judgment against the corpora- "'tion.' * * *

"Now, as the judgment rendered in the Kansas court "is in that State not only conclusive against the corpora- "tion, but also binding upon the stockholder, it must, in "order to have the same force and effect in other States of "the Union, be adjudged in their courts to be binding "upon him, and the only defenses which he can make "against it are those which he could make in the courts "of Kansas. The question to be determined in this case "was not what credit and effect are given in an action "against a stockholder in the courts of Rhode Island to "a judgment in those courts against the corporation of "which he is a stockholder, but what credit and effect are

" given in the courts of Kansas in a like action to a similar
" judgment there rendered. Thus and thus only can the
" full faith and credit prescribed by the Constitution of the
" United States and the Act of Congress be secured."

The bill therefore averred that the proceedings in Minnesota were conclusive; and that there was no matter of fact, or of law, in which the divers stockholders were interested as a whole.

It is not within the power of the Receiver to claim that a court of equity has jurisdiction of a matter, by way of avoidance of a multiplicity of suits, which, as he presents it, involves no such question of multiplicity, and no question of common defenses.

Had he presented his bill upon any other theory, claiming that there must be an ascertainment, in the Circuit Court, of the amount to be paid, and that all questions had not been settled in the Minnesota court, it would have failed by reason of what had been previously decided in the Elkhart case (87 Fed. Rep., 252).

It is true that by way of demurrer all the defendants set up a lack of equitable jurisdiction, as well as a claim that they were affected by no proceedings in which they had not been served, in the course of which facts had been found against them, and that a Receiver appointed in a particular litigation has no extra-territorial jurisdiction. This court, however, must determine whether a bill is well grounded in equity, not because of the defenses thereto, but because of the grounds for equitable relief therein stated.

If the Receiver was right in his contention as to the conclusiveness of the proceedings and as to his extra-territorial power, he was entitled to recover against each defendant in an action instituted in a court of common law. If, however, he was not right in his contention in those respects, he was not entitled to proceed in equity or at common law.

Having thus premised, we will discuss the question of whether the case was one within the jurisdiction of a court of equity under four propositions :—

(a.) *The right sought to be enforced by the appellant was not an equitable one.*

(b.) *No decree theretofore made in any court against the appellees was sought to be enforced against them in the bill.*

(c.) *The bill asked nothing more than a money decree, without presenting any equitable ground of relief.*

(d.) *Where there are several and distinct causes of action against different defendants under circumstances such as characterize the present case, the exercise of equitable jurisdiction is not justifiable upon any such grounds as the avoidance of multiplicity of suits, or for any other reason.*

(*a.*) THE RIGHT SOUGHT TO BE ENFORCED BY THE APPELLANT WAS NOT AN EQUITABLE ONE.

In support of his contention that the right which he seeks to enforce is an equitable one, the appellant, in his brief in the court below, said (page 8):—

> "The right, so far as creditors are concerned, is in "common and equal; that the purpose of the liability is "to create a fund, and the obligation of the stockholder "to contribute to that fund; that the liability is not an "asset of the corporation, or enforceable by it or its suc- "cessors in interest, as Receiver, assignee or otherwise; "and, finally, that it is to be made available in the equi- "table proceedings indicated, brought by or on behalf of "the creditors themselves directly, and in such further "proceedings as may be necessary to extend the relief so "as to embrace all stockholders subject to the liability."

We are not dealing with a bill in equity filed by a judgment creditor against the corporation and all the stockholders, seeking to ascertain the extent of the deficiency of the corporation assets and the amount of contribution necessary to be made by the stockholders under their statutory liability. The present bill is based upon no such foundation. It avers that in proceedings alleged to be conclusive, the extent of the contribution of each stockholder was ascertained and a Receiver was appointed to collect from each, the amount therein ascertained to be necessary to be paid by him.

The bill is based upon the duty imposed upon each stockholder, by the statute or Constitution of Minnesota, as a contractual obligation, to pay an amount equal to the par value of his shares. It avers that the maximum of liability, viz., the payment of such double amount, has been conclusively determined. In what possible aspect can this contractual obligation, or statutory duty, be claimed to be an equitable right? Each stockholder enters into an obligation, imposed by the statute because of his holding of shares, to pay, in case of a deficiency of corporation assets, to an extent not exceeding the par value of his shares. After the extent of the payment has been settled by a court of equity, the transaction is precisely as though the statute had originally obliged each stockholder, in case of corporation insolvency, to pay a fixed amount, equal to that thus determined. If the amount was not previously conclusively ascertained, the bill must fail. If, as the appellant claims, it was thus ascertained, nothing remained for the defendant but to pay the designated amount or to show that he was not a stockholder or had discharged his obligation.

It is true the Receiver was seeking to collect, under a duty on his part, after he had collected, to account to another court of equity having control, as was claimed, of the distribution, for the amount of such collections. This, however, did not in any way affect the question of whether the cause of action was equitable or legal. It was the duty of the Receiver to account for, and to distribute, in accordance with the rights of those interested in his collections, whether the latter were made in law or in equity. A trustee may have a right of action against a third person, but the fact that a suit is brought by such trustee does not give jurisdiction to a court of equity if the action is one only cognizable by a court of law.

The method of distribution of the fund, after its collection, through the action of a court having no control over such distribution, does not affect the question of the proper form of the action in the forum of collection.

Concede that the liability of the stockholders to pay is not an asset of the corporation or enforceable by it, we must still

deal with the fact that the method of its collection must be determined by the nature of the liability, and that courts of common law are amply sufficient to give all necessary relief to those resting their claims upon contractual or statutory liabilities.

We must not lose sight of the fact that the present bill began and ended with a demand for the payment of money averred to be due by each person who was a stockholder of the insolvent corporation. After such collection, the Receiver must distribute in another forum, which had no control of the method of collection, and could at best do nothing more than command that the alleged obligation should be collected by its Receiver.

The statutes of Minnesota give to a judgment creditor, in case of the insolvency of a corporation, the right to enforce the statutory liability, after ascertainment of the total amount of the deficiency of corporate assets. The original proceeding must necessarily be in equity, and if, by the court taking the original jurisdiction, all the stockholders can he served, it will have power to make, and to enforce, its decrees against them. As against stockholders not served, however, if the appellant is right in his contention, the court taking original jurisdiction may authorize a Receiver to collect what it shall have found to be due from them, as well as from the stockholders actually served. The Pennsylvania court, under the bill as filed, could deal with nothing except the claim of the Receiver to collect an ascertained and fixed sum of money resulting from a *quasi*-contractual obligation. It could not, and, as appellant claims, it did not, enforce equitable remedies prior to an ascertainment of the sum to be paid. Its jurisdiction, therefore, necessarily, must depend upon the nature of the claim to it presented.

(*b.*) NO DECREE THERETOFORE MADE IN ANY COURT AGAINST THE APPELLEES, WAS SOUGHT TO BE ENFORCED AGAINST THEM IN THE BILL.

We do not care to question the proposition that a court of equity may entertain jurisdiction of a bill against a defendant

which seeks to enforce against him a decree in equity made in another court. This court, sitting in equity, did enforce such anterior decree in the case of Shields *vs.* Thomas, 18 Howard, 253. In that case Shields had appeared as defendant in a Kentucky equity court, where a final decree was entered against him, which was sought to be enforced in the Iowa Federal court of equity. This court dwelt upon the necessity, under the circumstances of the case, for the exercise of equitable jurisdiction in Iowa.

In the present case, however, it is not claimed by the appellant that any decree was ever entered against the defendants. On the contrary, he admits they were not served in Minnesota. He avers that all the prerequisite proceedings necessary to ascertain the amount each holder of shares must pay, had been concluded; and claimed that a person not even decreed to be a stockholder should pay, if found to be a stockholder, the maximum sum required by the statute. So far as regarded any proceeding against the appellees, fixing them specifically with liability, the case in the Pennsylvania court was "*de novo*."

If the theory of the appellant was correct, each stockholder, *quâ* the payment of an amount equivalent to the par value of his shares, was in the position in which a stockholder owing unpaid subscriptions on his stock would have been, after the levy of an assessment covering what was unpaid.

(*c.*) THE BILL ASKED NOTHING MORE THAN A MONEY DECREE. IT DID NOT REST ITS DEMAND UPON ANY EQUITABLE GROUND OF RELIEF.

We concede that a court of equity may, under certain circumstances, entertain jurisdiction of a bill demanding the payment of money. Such jurisdiction will not be entertained, however, simply because money is demanded. On the contrary, if money and nothing more be demanded, and if the bill does not disclose equitable grounds of relief, it will be demurrable.

As we have seen, however, the present bill was framed upon the theory of a duty upon each stockholder to pay the equiv-

alent of the par value of his stock, after ascertainment in Minnesota that the assets of the corporation to the full extent of the equivalent of the par value of all its shares were insufficient for the payment of its debts.

The Pennsylvania court was not asked to find, and, under the framework of the bill could not find, a fact cognizable only, or better there than elsewhere, in a court of chancery.

We concede that where it is necessary to apply to a Chancellor for equitable relief, he may proceed with the whole case thus presented to him and may administer final relief, even to the extent of ordering money to be paid. His right to order the money paid, depends, however, upon some need for equitable relief stated in the bill. No such relief was shown by the bill to be necessary and nothing was asked for, excepting a decree for money.

(*d.*) WHERE THERE ARE SEVERAL AND DISTINCT CAUSES OF ACTION AGAINST DIFFERENT DEFENDANTS UNDER CIRCUMSTANCES SUCH AS CHARACTERIZE THE PRESENT CASE, THE EXERCISE OF EQUITABLE JURISDICTION WAS NOT JUSTIFIABLE UPON ANY SUCH GROUND AS THE AVOIDANCE OF MULTIPLICITY OF SUITS OR FOR ANY OTHER REASON.

The appellant rested his right to equitable relief, largely upon the ground that it was necessary to avoid multiplicity of suits. In support of his contention he showed much learning, considerable ability and very great ingenuity.

It is not necessary for us to enter into a controversy with him concerning certain general propositions, amounting almost to platitudes, which he has heretofore stated. We contend that the burden is upon him to show that he presented by his bill a foundation for equitable jurisdiction. We concede that the right of trial by jury, guaranteed by the Constitution of the United States, does not bar the jurisdiction of a court of equity to such extent as such courts had exercised a jurisdiction which excluded such trial. We do contend, however, that every citizen is entitled to a trial by jury saving in a cause within well-defined limits of equity jurisdiction, and that, unless the circumstances are of such character as require

equity to interpose, he cannot be compelled to fight his litigation in a general battle, involving not merely himself, but other litigants, with whose success, or failure, he has no concern.

The obligation of each stockholder is several and distinct, and rests upon his own special contract with the corporation, implied by reason of statutory provisions imposing liability upon him under certain circumstances. Primarily there is no reason why A., who is indebted to the creditors of a corporation by reason of his contract with them, implied by a statute ordering him to pay a sum not to exceed a specified maximum, in case of deficiency of corporation assets, shall be joined in a suit against B. and C. seeking to enforce against them their separate and distinct contracts. The stockholders are indebted if at all, not jointly, but severally. We have heretofore admitted that it may be necessary to join them all with the corporation in a suit having for its purpose the marshalling of assets, the taking of an account and the determination of the extent of a deficiency. All these things, however, as the appellants claimed, had been done. Nothing in this respect remained incomplete. Why, therefore, if the Receiver was entitled to treat the obligation of each defendant to be the same as if he had agreed to pay specifically an amount equal to the par value of his shares, is he not obliged to sue each, upon his contract separately?

This court, in Kennedy *vs.* Gibson, 8 Wallace, 505, declared:—

> "Where the whole amount is sought to be recovered,
> "the proceeding must be at law. Where less is required,
> "the proceeding may be in equity, and in such a case an
> "interlocutory decree may be taken for contribution," &c.

This declaration, as Judge McPherson showed, was followed in almost the latest case upon the subject, decided by the Circuit Court of Appeals of the Sixth Circuit, in Bailey *vs.* Tillinghast, 99 Fed. Rep., 801.

We would be very sorry to deny that courts of equity are entitled to take cognizance of actions for the purpose of avoiding

a multiplicity of suits. This, however, must not be confounded with the attempt made by the appellant, to induce a court of equity to take cognizance in one suit, of many separate causes of action at common law against many separate defendants, because of the number of the latter. A Receiver of an insolvent bank may find himself in the possession of a large number of promissory notes, given to the bank by many different persons. It would probably be more convenient for him to join them all in one suit in equity, than to bring separate common-law actions against each. No one, however, would suppose, because of the inconvenience resulting from many suits, that he could join them. It might be that every note might raise a question as to its being properly stamped, and that each defendant would defend upon the same ground of improper stamping because of a misunderstanding which had universally prevailed, as to the stamping required, when the notes were executed. It would hardly be contended that because the defense rested upon the same point of law, all the makers of the notes could be joined as defendants in one suit in equity.

As we have said, it is the right of each defendant, to a common-law trial in the case of every litigation not within the cognizance of equity courts, and to insist that the proceedings against him shall be so conducted that he will not be exposed to the expense and inconvenience of a joinder of other persons as defendants, in whose success he has no concern.

If, therefore, the Receiver's case is as he asserts, so peculiar in its character that he should be permitted to avail himself of equitable remedies because of the insufficiency of those afforded by the common law, it is his duty to satisfy the court of the existence of such peculiarity. The burden is upon him, of establishing the existence of that which ought to deprive the defendant of his *prima facie* right to a jury trial and to an action confined to himself.

Upon the appellant's theory, the only defense which can be interposed by any defendant, is the non-holding of the shares, or the fact of payment of what is alleged to be due by him. This defense, in the case of each defendant, is separate and

distinct. There is no community of interest or of defense or in the proof upon which the latter must rest. The effect of the joinder of all the defendants is, to compel each defendant to participate in proceedings more voluminous and extensive than they would be if confined to his own cause. Even if the theory of the appellant be incorrect and if other defenses are open, each defendant will be prejudiced in that part of his case which concerns his separate and distinct defense, by the joinder with others who have no interest therein. It must, therefore, be conceded that a strong case of inability to proceed adequately in a common-law action, must be established by the complainant. In what respect is a court of common law unable, if the Receiver is right as to his ability to collect and as to the conclusiveness of the Minnesota proceedings, to afford adequate relief? The present Receiver, in Hale *vs.* Hardon, found himself able to recover at common law the amount of his claim. He asserts, however, that by joining all the forty-seven defendants in one suit he will avoid multiplicity of actions. If, however, his right is several and distinct as against several defendants, it is his duty to bring as many actions as there are defendants. The fact of his having many claims, does not justify his enforcement of them saving in accordance with settled principles. He pretends that each defendant, as to a part of his defense, can set up the same matter, and that because thereof, all should be obliged to maintain one defense, although the cause of action is several, resting upon separate contracts, and although, as he concedes, each can only deny the existence of liability by himself, because of the non-existence, in his particular case, of the relation from which it is claimed to result.

As we have heretofore said, the right of a Receiver, to claim equitable jurisdiction, depends, not upon the defenses which may be interposed, so much as upon the nature of the case which he sets forth. He claims, as we have said, that there is an absolute, incontestable, duty, on the part of each defendant, if a shareholder, to pay. He does not ask for equitable relief upon the ground that the various defendants are interposing a defense which is common to all and ought to

be settled in one controversy. For this reason it was impossible for him to succeed in his demand that a court of equity, in the present controversy, because of its right under certain circumstances to take jurisdiction of a cause to avoid multiplicity of suits, should take cognizance of the present suit, which did not make any averments of facts out of which the jurisdiction could be evolved. *Non constat* that the defendants would raise any other ground of demurrer than the lack of equity in the bill. The bill, as we have said, must stand upon its own averments.

Apart from this, however, we submit with the utmost confidence, that there existed in the present case none of those circumstances which have induced the courts in the instances cited by him to assume equitable jurisdiction.

It is only necessary to read the cases he cites, and to become apprised of the circumstances under which courts of equity acted, to be satisfied that the present action presented no such situation as demanded the relief in those cases accorded.

A person who avers that some one is about to do some act claimed to be illegal, which if done will create a large number of supposed rights which will require thereafter to be litigated separately, may ask a court of equity to interpose by injunction to prevent the doing of such act, for the purpose of saving such subsequent multiplicity of suits. There is no analogy between such a ground for equitable interposition and that claimed in the present cause.

Again, whilst persons may hold separate claims against a particular property, courts of equity have interposed and have permitted a joinder of all the claimants upon averments that the separate claims rested upon one title as against the party demanding relief.

Other cases can be found in which, as prerequisite to judgment, it was necessary to take complicated accounts, or to ascertain facts, or even legal rights in which many persons were interested where the proceedings could be conducted without prejudice to the rights of any one, and almost demanded the joinder of all concerned.

None of these cases, however, are similar to the present, where a separate contract was sought to be enforced against the defendants who ought to be kept separate, in a suit in equity in which all were joined. The appellant says all the defendants may assert, although his bill does not aver they will, that the proceedings in Minnesota, to which they were not parties, did not affect them, and that a Receiver, appointed in Minnesota, had no right to demand recognition in the court of another State for the purpose of therein enforcing claims.

These defenses, however, were not peculiar to the cause before this court. They are the assertions of general principles of law. To assume equitable jurisdiction in one action, of distinct claims, because the different defendants will avail themselves of general principles of law, would be anomalous.

The title to five or six distinct pieces of real estate, held by five or six different persons, derived from different predecessors, may all rest upon the assertion of the rule in Shelley's Case. Would this justify proceedings in equity to recover possession by a person claiming all of them? All the defendants agree, by demurring, in a defense, that the bill presents no ground for equitable relief. Does this justify their joinder, though the causes of action against them be separate, in one proceeding in equity? We concede that cases may be found in which the courts have held, where a great number of defendants as against the claimant of a whole tract, maintained the existence of a title common to all, that such defendants might be joined in a proceeding in which all would be compelled to assert, or to defend, the common title. No court, however, has held, because of the fact that several defendants, against whom there were several causes of action, appealed to the same settled legal principles, that they could be joined in one suit.

We repeat, therefore, that *prima facie* there was no right to equitable relief in the appellant; that it was his duty to show clearly, that unless accorded equitable relief he would not be able to succeed; and that he utterly failed to establish the inability of courts of common law to grant him all the relief, if any, to which he was entitled. We repeat that, unless

the appellant successfully maintains the burden imposed upon him, each defendant has a right to demand a separate suit against himself in a forum having jurisdiction, and none the less, because many other defendants may rest their defenses upon the same general principles of law to which he will appeal.

We may concede that as common-law remedies develop their inadequacy, equitable relief may be accorded; but we deny that the appellant has shown, in this case, any inadequacy, such as justifies the extraordinary procedure he has pursued.

It is not necessary to consider, in detail, the large number of authorities which the learning of the counsel of the appellant enabled them to assemble in their briefs heretofore filed. We meet them with the general remark that, excepting possibly in the case of Hale *vs.* Hardon alone, we do not challenge their correctness, but claim they furnish no foundation for the demand of equitable relief in the present controversy.

The cases in which one plaintiff has been permitted to proceed in equity against many defendants, or in which many plaintiffs have been permitted to proceed against one defendant, because of a common ground of claim or of defense, are radically different from the present. In many of them the right to relief depended upon the ascertainment of facts in which all the persons joined had a common interest, although the results to each might be distinct. In most of them, the issue of fact common to all could better have been determined in a case in which all were joined, than in separate suits. In very many of them there was a necessity to join all the parties in order to obtain any relief. The cases (and they have almost all involved other equitable reasons for interference) in which a question of law has been held sufficient to justify proceeding in equity because of all being interested alike in its establishment or denial, are those in which such question was only necessary to be determined in the particular case, and was not one of those general principles which constitute part of the general body of law. No assertion of a general principle, such as that no one can be concluded by legal proceedings in which he is not a participant, or that one court is not obliged

to recognize the right therein of a Receiver appointed by another, has ever been held sufficient to give the jurisdiction here claimed.

Outside of the demurrer, which rests upon the want o jurisdiction in equity, the remaining demurrers rest upon the denial of the right of the Receiver to sue in any forum. They rest upon no question of fact. Surely, if the Receiver sued at common law, it would be his duty to prove there had been proceedings which concluded the stockholders, settling their duty to pay the amount demanded, and which entitled him to enforce such duty. The defendants need do nothing until the establishment by the Receiver of the vesting in him of the right of the creditor to proceed, without ability in the defendants to question the amount of his claim. Can a Receiver, because it is necessary for him to establish his right to proceed at all, force a defendant, entitled to the decision of a common-law tribunal, into a court of equity? The cases in which courts of equity have taken jurisdiction have always been those in which the questions of fact, or of law involved, were those which went to the existence of any cause of action, not merely to the capacity in which the plaintiff claimed.

The appellant in his brief in the court below (page 11) said :—

> "The asserted obligation of defendants is referable to "a common origin, *i. e.*, the Minnesota law, constituting "the contract between stockholders and creditors. The "right to assert the obligation is equally referable to a "common origin, *i. e.*, the decree in the parent proceed- "ing ascertaining the conditions precedent to its enforce- "ment as against all stockholders. And finally, the right "of complainant to proceed in behalf of and as represent- "ative of all creditors in interest, presents a common "question equally affecting all the defendants and in "which they are similarly interested. The rights of all "parties in interest have therefore a common origin and "present similar questions of law and fact decisive of the "issues involved."

The Minnesota law, "constituting the contract between "stockholders and creditors," imposes an obligation upon the

stockholders of all corporations. Can Receivers of several corporations collect in one suit in equity against the different stockholders of different corporations, because of the common origin of the obligation, *i. e.*, "the Minnesota law"?

What possible foundation for the exercise of the jurisdiction of a court of equity exists, by reason of the fact that a decree in Minnesota ascertained, if it did ascertain, as appellant claims, conclusively, that it was necessary for each holder of shares to pay an amount equal to the par value of his holding? The condition precedent to a suit at common law, is the ascertainment of the amount per share to be paid by each stockholder. Thus ascertained, the obligation results from the Minnesota statute, not from the Minnesota legal proceedings.

The complainant does, or does not, have a right to proceed because of his appointment as Receiver to collect from each stockholder. If he does not possess such right, he cannot proceed. If he does, the nature of his proceeding must depend upon the nature of his action against each stockholder. Upon his theory, there is no common question, "equally af-"fecting all the defendants." Each defendant is entitled to a defense, special to himself. The right of a Receiver depends upon general principles of law. A defendant does not avail himself of these principles, under penalty of losing his right to a trial by jury and to a separate action.

The whole ground upon which the Receiver rested his right to proceed in the anomalous way he adopted, was, that if he sued at common law, the several stockholders separately, upon their several statutory or contractual obligations, he would be compelled, as against each, to show that the condition precedent to his right to sue, viz., the legal ascertainment of the deficiency, had been performed, and he would also be compelled to establish his right to recognition in the forum in which he sued. It would be necessary for the Receiver to produce in each case, if the proceedings accomplish what he claims, a certified copy thereof. Would this necessity justify him in depriving the defendants of their common-law rights to be sued separately? It would be necessary for him to prove, as against each defendant, the fact of his being a stockholder. Would

this justify him in putting all the stockholders into one suit? Every lawsuit involves the necessity of proof by the plaintiff of the facts therein averred. Does this justify him, because he has many suits, in joining all the suitors in one proceeding?

Suppose the complainant had brought forty-seven actions at law against forty-seven defendants, would he have been involved in any such difficulty, because of the multiplicity of suits, as would have justified him in demanding equitable relief? In one suit, to the same extent as would have been requisite in several, he must have proven, as against each defendant, the fact of his holding shares, and must have met an issue of whether or not the defendant was a holder and of whether or not he owed the money.

Would he have been exposed to any difficulty in establishing by forty-seven arguments, before any of the judges of the court below in case of the forty-seven suits having been brought there, the legal principles lying at the basis of his right to proceed, *i. e.*, the conclusiveness of the Minnesota proceedings and the right of the Receiver to be there recognized?

What is meant in most of the cases, by jurisdiction in equity to avoid a multiplicity of suits, is admirably illustrated by the ruling of this court in Smyth *vs.* Ames, 169 U. S., 518, where the stockholders of a corporation were permitted to file a bill against a corporation and against certain State officials who were seeking to enforce an alleged unconstitutional State law interfering with rates of transportation, because of the necessity of avoiding a multiplicity of suits. All the parties were before the court who were interested in the question. By its determination in advance, this court prevented the doing of acts out of which suits innumerable would have necessarily sprung.

Another type of cases in which equity has taken jurisdiction to avoid multiplicity of suits, is presented by Hayden *vs.* Thompson, 71 Fed. Rep., 60, where stockholders had received dividends illegally paid out of capital. A Receiver was permitted to join all the stockholders who had thus received these illegal dividends in order to avoid multiplicity of suits.

The case was one essentially for a court of equity, because it involved the necessity of taking a complicated account of corporation dealings, in which account all the stockholders against whom the proceedings were instituted were equally interested.

In Hawkins *vs.* Glenn, 131 U. S., 319, a decree was entered in the first instance making an assessment upon the stockholders. Thereafter, in an action at law in another Circuit Court, the stockholder was made to pay the amount of the assessment. There is no difficulty whatever, therefore, in obtaining efficacious relief at common law. As we have said, in another circuit, in Hale *vs.* Hardon, this relief at common law has been actually accorded to the present Receiver.

In Kirwan *vs.* Murphy, 83 Fed. Rep., 280, an injunction was allowed against certain officials proceeding with a survey which it was alleged would result in the destruction of much valuable timber and would be a cloud upon the plaintiff's title, involving him in a multiplicity of suits. The court sustained the jurisdiction, saying:—

> "The very purpose of the proposed survey by the offi-
> "cers of the Government in this case is to establish the
> "right of the Government to the land, as public land,
> "the title to which we think, upon the facts stated in the
> "bill, it has already parted with by issuing its patents
> "therefor; and the fact that there is a controversy in re-
> "lation to it would necessarily, from a business point of
> "view, as every intelligent person knows, be a serious in-
> "jury to the plaintiffs' title and tend to greatly depreciate
> "its market value. No one would want to buy property
> "while thus affected, nor loan money upon it as security.
> "It further appears by the bill that a number of people
> "have settled upon portions of the land described in the
> "bill, and it is evident that if this survey is permitted,
> "and the land again thrown open to settlement, as it may
> "be, the plaintiffs, in order to maintain their title, would
> "be involved in a multiplicity of suits to defend it against
> "the claims of parties who had settled thereon."

The effect of the injunction was to prevent the creation of a number of titles adverse to that of the complainant, which would result in the necessity of a multiplicity of suits.

In Ulman *vs.* Iaeger, 67 Fed. Rep., 983, all the defendants were purchasers of land at a tax sale, which menaced the title of the plaintiff. The court said :—

"In this case it is alleged that there is a common wrong "against the rightful owners of this land, insisted upon by "all of the defendants who were purchasers of the land at "the tax sale. That common wrong involves the title of all "of the numerous purchasers of the lands in controversy. "As an incipent step in the litigation, it becomes neces- "sary to vacate and annul the deeds of these various "purchasers, founded, as it is alleged, upon proceedings "that were not only irregular in not complying with the "statute, but were absolutely void, by reason of the fact "of an alleged interest in them of the judge of the court "who presided at the time they were had. It is doubt- "ful if the last allegation just referred to would be prop- "erly cognizable on the law side of the court, under the "peculiar circumstances of this case. Be that as it may, "it is a very grave charge, and, we think, more properly "belongs to a court of equity, and should be heard in "that forum. If we hold that actions of law should be "brought for the recovery of the lands sold at the tax "sale, it would involve the bringing of suits against each "one of the defendants; or, if they were all impleaded in "one action of ejectment, each one could demand a sep- "arate trial, which would occasion unusual delay, and "greatly increase the cost of litigation. The purpose and "object of this suit in impleading so many in one action "is to prevent oppressive and vexatious litigation, which "is not only unnecessary, but is often unavailing, as it "might prove to be in this case.

"Upon the demurrers the rights to all the parties to "the tax sale would depend upon the same questions of "law. In this connection it is insisted that there is no "privity of interest, by contract or otherwise, between "the demurrants and Ulman and Iaegers, except that "which the law implies, which, under the circumstances "of this case, we hold creates such a privity of interest as "justifies this action. We therefore conclude that, if "there is a remedy at law, this is one of those cases in "which there is also a co-existent remedy in equity, and "that the action may be maintained in either forum, but "that a more adequate remedy would be found in equity; "first, because it is the proper forum in which to raise the

"question of a cloud upon the title, and to obtain relief "by a decree of the court removing the same; and, sec- "ond, because the object is to vacate and annul deeds "that might be used in the chain of title in an action of "law."

In Cockrill *vs.* Cooper, 86 Fed. Rep., 7, 13, it was said:—

"Another important question which is raised by the "demurrer and was discussed at some length on the argu- "ment, is whether the wrongs complained of in the bill "may be redressed in equity, or whether a court of law is "alone competent to afford relief. In behalf of the ap- "pellees is it urged, in substance, that, as the directors "of a corporation are not vested with the title to its "property and effects, they are not trustees, but mere "agents of the corporation, and that an action brought "against them by the corporation or its Receiver to re- "cover damages for mismanagement of the corporate "affairs is necessarily one of legal cognizance, which can "only be maintained at law. It may be conceded that "directors are not technically trustees, because they "are not vested with a title to the corporate property, "and that their relation to the corporation which "they represent is that of agents, and that for "many acts of misfeasance and nonfeasance they can "be sued at law. But it does not follow from this "concession that the jurisdiction of courts of law "over directors is so far exclusive as to prevent courts of "equity, under all circumstances, from affording redress "for similar wrongs. It is admitted, as we understand, "even by those courts which have taken the most ad- "vanced ground in support of the jurisdiction at law, that "cases may arise where the obstacles in the way of ob- "taining speedy and complete relief at law for illegal and "negligent acts of directors are so great as to justify a re- "sort to equity. O'Brien *vs.* Fitzgerald, 143 N. Y., 377, "38 N. E., 371; (*Id.*, *Sup.*) 39 N. Y., Supp. 707; *Id.*, 150 "N. Y., 572, 44 N. E., 1126; Dykman *vs.* Keeney (N. Y. "App.), 48 N. E., 895. In the case of Hayden *vs.* Thomp- "son, 36 U. S. App., 361, 17 C. C. A., 592, and 71 Fed., "60, this court upheld the right of a Receiver of an in- "solvent National bank to maintain a bill in equity "against the shareholders of the bank, collectively, to re- "cover dividends which had been paid in violation of

"section 5204 of the Revised Statutes. The right to sue "in equity was maintained on the ground of avoiding a "multiplicity of actions; also, on the ground that the "suit was one to redress a fraud and breaches of trust; "and, generally, because the remedy at law was inade- "quate. Many other courts have entertained bills in "equity, or have asserted their right to do so, for the "purpose of compelling the directors of a corporation to "make good losses which the corporation had sustained "by reason of their unauthorized, negligent or fraudulent "acts. Briggs *vs.* Spaulding, 141 U. S., 132, 11 Sup. Ct., "924; Hornor *vs.* Henning, 93 U. S., 228; Stone *vs.* "Chisholm, 113 U. S., 302, 5 Sup. Ct., 497; Robinson *vs.* "Hall, 25 U. S. App., 48, 12, C. C. A., 674, and 63 Fed., "222; Hodges *vs.* Screw Co., 1 R. I., 312; Ackerman "*vs.* Halsey, 37 N. J. Eq., 356; Williams *vs.* McKay, 40 "N. J. Eq., 189; Crown *vs.* Brainerd, 57 Vt., 625; Swent- "zel *vs.* Bank, 147 Pa. St., 140, 23 Atl., 405, 415; Brinck- "erhoff *vs.* Bostwick, 99 N. Y., 185, 1 N. E., 663; *Id.*, "105 N. Y., 567, 12 N. E., 58; Schley *vs.* Dixon, 24 Ga., "273; Bank *vs.* Bosseiux, 3 Fed., 817; Welles *vs.* Graves, "41 Fed., 459; Bank *vs.* Wade, 84 Fed., 10; Stephens *vs.* "Overstolz, 43 Fed., 771, 773. Indeed, if there is any "conflict of opinion touching the power of a court of "chancery in this respect, it arises over the circumstances "that shall be deemed sufficient to warrant its exercise. "It is doubtless true that a stronger showing, by allega- "tion and proof of the necessity for equitable relief, is re- "quired in some jurisdictions than in others; but the "right of a court of equity to exercise jurisdiction in "suits brought against directors, when the remedy at law "is, for any reason, not fully adequate, cannot be success- "fully denied. The truth is that the office and functions "of a director are so much akin to those of a trustee that "in many cases no substantial reason can be given for "exempting directors from that degree of control by "a court of chancery which such courts ordinarily "exercise over trustees. The doctrine is well settled "in the Federal courts that in those cases where "the right of a court of equity to afford redress for "wrongful acts depends upon the inadequacy of the "legal remedy, courts of equity may exercise jurisdic- "tion, unless the legal remedy is 'as plain, * * * "'practical and efficient to the ends of justice and its "'prompt administration as the remedy in equity.' In "determining whether a suitor should be permitted to "sue in equity, the Federal courts have always attached

"much importance to the fact that the remedy in the "latter forum, as compared with the remedy at law, 'will "'save time and expense and a multiplicity of suits, and "'settle finally the rights of all concerned in one litiga-"'tion.' In other words, the argument *ab inconvenienti* "is never overlooked, but is given great weight. Boyce's "Exrx. *vs.* Grundy, 3 Pet., 210, 213; Oelrichs *vs.* Spain, "15 Wall., 211, 228; Preteca *vs.* Land Grant Co., 4 "U. S. App., 326, 330, 1 C. C. A., 607, and 50 Fed., "674; Hayden *vs.* Thompson, 36 U. S. App., 361, 368, "17 C. C. A., 592, and 71 Fed., 60. If these tests are "applied to the case in hand, we think it may be safely "asserted that the Receiver is entitled, on the showing "made by the bill, to invoke the remedial powers and "processes of a court of chancery to redress the wrongs "of which he complains. The proceeding is brought "against sixteen directors, or their personal representa-"tives, whose respective terms of service were not identi-"cal, except in four cases. If the Receiver is compelled "to sue at law, numerous actions must be brought, and "very likely several separate actions would have to be "brought against some of the directors to comply strictly "with the rules of procedure at law governing the joinder "of parties. It is also fair to infer from what is stated in "the bill that the excessive loans therein complained of "were inaugurated by one set of directors, and either "continued, renewed or enlarged by another, so that a "suit brought against any one of the directors would "probably involve an inquiry into the proceedings of the "board of directors and into many of the financial trans-"actions of the bank for the entire period during which "its affairs are alleged to have been mismanaged. If the "legal remedy is pursued it is probable, therefore, that "the Receiver would find it necessary, in preparing his "proof in numerous cases, to travel over much of the "same ground in each case, while it is certain that the "burden and expense of the litigation would be largely "increased, and that the litigation itself would be need-"lessly prolonged and delayed. The right to sue in "equity, however, does not depend altogether upon the "consideration last mentioned. One charge contained "in the bill is that the directors on several different "occasions declared and appropriated dividends in viola-"tion of section 5204 of the Revised Statutes. An in-"vestigation into the merits of this charge will necessarily

"involve a critical inquiry into the financial condition of "the bank on each of said occasions; and as this court "held in Hayden *vs.* Thompson, 36 U. S. App., 361, 369, "17 C. C. A., 592, and 71 Fed., 60, that is an inquiry "which is peculiarly appropriate to a court of chancery, "since an account of any considerable length or intricacy "cannot be stated before a jury with that degree of fair- "ness and accuracy which is necessary, or at least desir- "able, in a judicial proceeding. We are led to the conclu- "sion, therefore, that the legal remedy for the grievances "alleged in the bill is neither as practical and efficient, "nor as conducive to the speedy and correct administra- "tion of justice, as the remedy obtainable in equity. In "the latter forum it will be possible in a single proceed- "ing, and with much less labor and expense, to measure "the responsibility of each director for the losses which "the bank may have sustained in consequence of the "alleged negligent and unauthorized acts of the directors, "and at the same time to adjust all rights and equities of "the directors as between themselves and as between "them and the Receiver, with reasonable accuracy, and "with a close approximation to exact justice. In a case "of this character such a result cannot be obtained at "law. In conclusion, on this branch of the case, it is "proper to add that for obvious reasons courts of equity "are best adapted to adjust controversies such as usually "arise between Receivers of insolvent corporations and "the directors and managers of such concerns. The re- "medial processes of a court of chancery are of special "utility in such cases, since it is usually found necessary, "in the course of such proceedings, to unravel many "irregular and intricate transactions to the end that the "responsibility for losses which have been sustained "through the careless or fraudulent acts of directors or "other managing officers may be located where it of right "belongs. In a court of law there is always a greater "probability that the guilty will escape detection, or that "the innocent may be made to suffer for the wrongful "acts of others. For this reason it seems evident that "Receivers and assignees of insolvent corporations will "be embarrassed and delayed in the discharge of their "duties, that the creditors of such concerns will in many "cases sustain loss, and that equal and exact justice will "not always be done if the right of such officers to invoke "the remedial powers of a court of chancery in aid of the

"administration of the trusts that have been committed
"to their charge is denied. The public interest, there-
"fore, seems to demand that the right of such officers to
"sue in the forum of equity should neither be viewed
"with disfavor nor denied on slight or technical grounds.
"It is sufficient to say that in the present case we have
"discovered no adequate reasons for denying the com-
"plainant's right to equitable relief."

It will be observed that the Cockrill case was one in which an accounting as to the transactions of a corporation was essential to any relief. It was pre-eminently necessary that this accounting should be taken in one proceeding. All were equally interested in the results of such accounting and no injury could possibly result in the shape of destruction of separate defenses, by sustaining the jurisdiction.

In Terry *vs.* Little, 101 U. S., 218, this court held that the liability of the stockholders was not to any particular creditor, but to all, and that therefore, in any original proceeding for its enforcement, it was necessary to resort to a court of equity to marshal the assets and to procure contributions to such extent as should be found necessary under the accounting from all the shareholders.

In Flash *et al. vs.* Conn, 109 U. S., 380, under a statute which permitted any creditor to proceed, this court said:—

"Lastly, it is objected that the declaration sets out a
"case which should have been prosecuted in equity and
"not at law. There is no ground for this objection to
"rest on. In the cases of Pollard *vs.* Bailey, 20 Wall,
"520; Terry *vs.* Tubman, 92 U. S., 156, to which we are
"referred in its support, the liability of the stockholders
"was in proportion to the stock held by them. Each
"stockholder was therefore only liable for his proportion
"of his debts. This proportion could only be ascertained
"upon an account of the debts and stock and a *pro rata*
"distribution of the indebtedness among the several
"stockholders. This, the court held, could only be done
"by a suit in equity.

"But in this case the statute makes every stockholder
"individually liable for the debts of the company for an
"amount equal to the amount of his stock. This liability

"is fixed, and does not depend on the liability of other "stockholders. There is no necessity for bringing in other "stockholders or creditors. Any creditor who has re- "covered judgment against the company and sued out an "execution thereon, which has been returned unsatisfied, "may sue any stockholder, and no other creditor can. "Such actions are maintained without objection in the "courts of New York, under section 10 of the statute "relied on in this case. Shillington *vs.* Howland, 53 "N. Y., 371; Weeks *vs.* Suydam, 64 N. Y., 173; Handy "*vs.* Draper, 89 N. Y., 334; Rocky Mountain National "Bank *vs.* Bliss, *Id.*, 338."

In Hyman *vs.* Wheeler, 33 Fed. Rep., 629, the purpose was to test the validity or invalidity of a title in which all the parties who were summoned were interested. All claimed or denied the same title. The "*rem*" being practically the same, although different parties held different interests therein, the court assumed equitable jurisdiction of the whole "*rem*" and settled the rights thereto as against, and between, all the parties claiming thereunder. It said:—

"It is claimed by counsel that there is no unity of in- "terest on the part of the various defendants; that because "one man has a claim to one piece of ground, and from "that asserts title to a portion of this vein, his contro- "versy with the plaintiff is entirely independent and dis- "tinct from the controversy with another man, who has "another piece of ground, and upon his claim to that "ground asserts a right to perhaps a distinct portion of "this vein. Very many authorities were presented and "discussed. I think it impossible to harmonize them all, "and therefore do not stop to comment upon them. The "case of Railroad Co. *vs.* Dyer, 1 Sawy., 641, contains "what to my mind is very wholesome and salutary doc- "trine in respect to these matters. It lays down the "proposition that where there is a single title to a con- "tinuous property, and that title rests upon one state of "facts, one grant; and there are many persons who, with "inferior titles or claims, are threatening litigation, al- "though their claims may spring from different sources, "a court of equity has power, in order to give to the "holder of this single property the full enjoyment of his

"property, to summon all such parties into a single suit, "and in that by decree establish the plaintiff's title, and "restrain all the defendants from further litigation or "interference. It is the only way ofttimes where a man "can be protected in the beneficial enjoyment of his prop- "erty. If each individual claimant, as, in that case, a "number of squatters along the line of a railroad, were "permitted to maintain his independent action against the "railroad company, the cost and the time and the worry "of the litigation would seriously impair the value of the "grant to the company; and so, according to the state- "ments that are made here, with a knowledge of the ex- "pensiveness of this mining litigation and the length to "which it may be continued, it may well be, as the com- "plainant asserts, that if every claimant is permitted "to carry on his separate action of ejectment, with the "two and possibly three trials which the law gives "therein, the value of the property, which the Govern- "ment has granted him, will be practically destroyed. I "think, therefore, that following that decision, it cannot "be said that the fact that these defendants have various "interests prevents a court of equity from calling them "in.

"Neither can it be said that there is no equity in "the bill. Equity discountenances a multiplicity of "suits, that is one of the grounds of its jurisdiction; and "it aims, by restraining a multiplicity of suits, to give to "the owner of the property the beneficial enjoyment of "it, and to enable him to get the benefit of its ownership, "rather than waste it in many and diverse suits."

In Bailey *vs.* Tillinghast, 99 Fed. Rep., 804, the Receiver of an insolvent bank sued in equity to enforce an assessment against stockholders, where such assessment was less than the full amount of their liability. The court quoted and followed what had been said by Mr. Justice Swayne, speaking for this court, in Kennedy *vs.* Gibson, 8 Wallace, 498, to the effect that when the whole amount is sought to be recovered, the proceeding "must be at law," and that "where less is required, "the proceeding may be in equity, and in such case an inter- "locutory decree may be taken for contribution, and the case "may stand over for the further action of the court, if such

"action should prove to be necessary, until the full amount of "the liability is exhausted"

In the Tillinghast case there was a necessity for an accounting, and under such accounting it became necessary for the court to go on and administer complete relief.

The court there said that they could rest the equitable jurisdiction upon the necessity of avoiding a multiplicity of suits. It added that there was a common question in the case between the Receiver and the defendants, viz., the question whether the latter were released from their stock subscriptions by the fact that, whereas the resolution for increasing the stock in the sum of $300,000 was that under which their subscription took place, yet subsequently, by proceedings to which they did not consent, the proposed increase had been reduced to $150,000. The court said:—

> "If the Receiver was compelled to bring separate suits, "it would entail a vast expense upon the fund in trying "over and over again the identical questions of law and "fact with each stockholder, and with no substantial ad- "vantage to him, but injury, rather, in the increased cost "in the immediate suit, and the larger burden upon the "fund, created by the many suits against the others.
>
> "Nor is it necessary, as counsel seem to suppose, that "there should be any privity of interest between the "stockholders other than that in the question involved "and the kind of relief sought, the right of their claims "being common to them all, in order to bring the case "within the jurisdiction."

It further said:—

> "It is true that there are occasional cases where it seems "to have been supposed that there must be some commu- "nity of interest, some tie between the individuals who "make up the great number; but the great weight of "authority is to the contrary, and there is a multitude of "cases which either in terms deny the necessity of such "a fact or ignore it by granting relief where the fact did "not exist. And, indeed, it is difficult to find any reason "why it should be thought necessary. It has no rele- "vancy to the principle or purpose of the doctrine itself,

"which stands, not merely as a makeweight when other "equities are present, but as an independent and substan- "tive ground of jurisdiction."

In DeForest *vs.* Thompson, 40 Fed. Rep., 375. it was said:—

"It is alleged in the original and first amended bill in "this cause that the plaintiff was the owner of sixty thou- "sand acres of land lying mostly in Boone County, in this "State, a part of which is in controversy in this suit; that "for the years 1869 and 1870 it was returned delinquent "by the sheriff of Boone County for the non-payment of "taxes thereon, in the name of the plaintiff; that on the "twelfth day of October, 1871, it was sold by the sheriff "of Boone County for the non-payment of taxes thereon, "and was purchased by the State, not being redeemed by "the owner within the time prescribed by law; that the "land was certified by the then Auditor of State 'as land "'within said Boone County, forfeited to the State of "'West Virginia in the name of Burr Wakeman, for the "'non-payment of the taxes thereon for the years 1869 and "'1870;' that afterwards the defendant, Thompson, Com- "missioner of School Lands for Boone County, filed his "petition in the Circuit Court for that county to have the "said land sold for the benefit of the school fund, and, a "decree being obtained for that purpose, the Commissioner "sold a portion of the land and made a conveyance to "the purchasers thereof. The bills allege numerous irreg- "ularities and illegalities in the proceedings as reasons "why the sales and deeds should be declared illegal and "void. After the filing of the original and the first "amended bills the plaintiffs allege that they discovered "other errors, irregularities and illegalities in the proceed- "ings of the sheriff and recorder of Boone County in "relation to the sale of the land and the report thereof to "the Recorder by the sheriff, and the recordation thereof "by the Recorder, which would render the proceedings "absolutely null and void, and that in fact no forfeiture of "said tract of land ever occurred. * * *

"The next position insisted upon by the defendants to "defeat the plaintiffs' action is that, if the plaintiffs' posi- "tion is true, that the proceedings were absolutely void "under which the lands were sold, then the plaintiffs "have a complete and adequate remedy at law, and this

"court, sitting in equity, is without jurisdiction to grant "the relief asked for. It will be observed that the lands "in question were sold by virtue of the proceedings in "the Boone Circuit Court, and passed into the hands of "numerous parties, each of whom claims under a sale "made under the order of that court relating to the whole "of the land in dispute. The State court based its pro- "ceedings upon steps previously taken upon the forfeiture "of these lands as delinquent lands. The lands prior to "the alleged forfeiture and sale under the order of the "court constituted one body, and were held by one per- "son, Burr Wakeman. If the attempt to forfeit them was "not in law a forfeiture that divested his title, or if the "proceedings in the Boone Circuit Court were unauthor- "ized and void, then the title as to all the lands remains "in Wakeman, and passed under his will to the plaintiffs. "Each defendant's title depends upon the same questions, "and those questions all have relation to the proceedings "in the Boone Circuit Court and to the attempt to forfeit "the lands for non-payment of taxes. It is a case of one "person having a right against a number of persons, which "may be determined as to all the parties interested by one "suit. If the plaintiffs brought ejectment against one of "defendants and succeeded, the judgment would not "conclude the other defendants, although the question in "each case would be precisely the same. But if the plain- "tiffs can, by one comprehensive suit, have their rights "declared and secured as to all the lands, the possession "of which is withheld by the defendants, each claiming "a particular parcel, but all basing their claims upon the "same proceedings instituted by the officers of the "State, may they not invoke the jurisdiction of a court "of equity upon the familiar ground that by suing in "equity and bringing all the defendants before the court "in one action they can avoid a multiplicity of suits? I "think they can. 1 Pom. Eq. Jur., sections 245–269, "inclusive."

The observations which we have made upon the case of Hyman *vs.* Wheeler are equally applicable to this case.

The same observation may be made concerning the case of Osborne *et al. vs.* Wisconsin Cent. R. Co., 43 Fed. Rep., 824, in which it was said:—

"While the plaintiffs have separate and distinct inter- "ests because of their respective claims of ownership of

"separate and distinct tracts of land, they have a com-
"munity of interest in the subject-matter of the contro-
"versy relating to these lands, and a common source of
"title, namely, the action of the Land Department open-
"ing these lands for entry under the homestead and pre-
"emption laws of the United States. They have thus a
"community of interest in the questions of law and fact
"upon which the issue between the railroad company
"and each plaintiff depends. The company's claim is
"good or bad against all the plaintiffs, as it may be good
"or bad against any one of them; and yet a judgment
"in favor of one, in an action of ejectment brought by
"the company, would not avail the others in separate
"actions of ejectment against them. The case is pecu-
"liarly one in which the jurisdiction of a court of equity
"may be invoked in order to avoid a multiplicity of
"suits. It belongs to a class 'where a number of per-
"'sons have separate and individual claims and rights of
"'action against the same party, but all arise from some
"'common cause, are governed by the same legal rule,
"'and involve similar facts, and the whole matter might
"'be settled in a single suit brought by all these persons
"'uniting as co-plaintiffs, or one of the persons suing
"'on behalf of the others, or even by one person suing
"'for himself alone.' 1 Pom. Eq. Jur., sections 245, 255,
"257, 268, 269, 273, and authorities cited in notes to
"these sections. Crews *vs.* Burcham, 1 Black, 352, 357.
"In such cases the plaintiffs are united by a common
"tie, created by identity of interest in the decision of the
"same questions of law and of fact, and have a common
"adversary. The fact that the several tracts of land here
"in dispute were entered at different dates and by differ-
"ent persons, is of no consequence, as the validity of
"each entry, as against the railroad company, depends
"upon precisely the same questions of law and fact."

In San Lung *et al. vs.* Jackson, 85 Fed. Rep., 502, a Collector of Customs, proceeding illegally, was enjoined at the instance of several persons from proceeding to carry out the provisions of an illegal Act. The syllabus reads:—

"A number of persons having distinct interests in a
"quantity of tea about to be destroyed by a Collector of
"Customs, under the Act forbidding importation of im-
"pure teas, may, on the ground of preventing a multi-

"plicity of suits, maintain a suit in equity to enjoin the "Collector, since they have a common interest in the "question whether he has legal authority to commit "the act."

We close our observations under this head by asserting that equity has never assumed jurisdiction of a common-law action and has never forced several people against whom exist several claims resting upon separate contracts, into the defense of one such action, under circumstances like those existing in the present case, which presents an absolute absence of all reasons for pursuing the extraordinary course which has been adopted.

Even if the case was cognizable in equity, it was multifarious, because of the joinder of the parties severally liable, in a joint action, with the result of all being compelled to litigate in one proceeding, defenses which the appellant claimed must necessarily be individual and separate.

II. The Minnesota statutes provided a statutory remedy which is exclusive, which did not permit of the proceedings instituted in Pennsylvania.

Before discussing this proposition we will state the course of decisions in Minnesota as to the form of proceeding required by the Minnesota statutes as rendered antecedently to the entry of the final decree in the Rogers suit in Minnesota.

In Allen *vs.* Walsh, 25 Minn., 543, decided more than twenty years ago, it was said:—

"It is reasonable to suppose that the legislature in- "tended by those sections (referring to the sections here- "tofore given) to provide an efficient and sole remedy for "enforcing payment of the debts of an insolvent corpora- "tion out of the individual liability of its stockholders, "for the rule is well settled that where a statute which "created a right also prescribes an adequate remedy, the "latter is to be taken as the exclusive one; that the chap- "ter which gives this remedy forms a part of the general "statutes, which were adopted in 1866 and which contain "the enactment that creates the statutory liability, and

"therefore the rule referred to is fairly applicable. It is "shown, from an examination of these sections, that the "remedy they provide contemplates a single action, in "which all persons having or claiming any interest in "the said action shall be joined or properly represented "and their rights, equities and liabilities finally settled "and determined."

This decision, as settling the law of Minnesota, was referred to, in various subsequent decisions, during a period of twenty years, until the case of Hanson *vs.* Davison, adjudicated by the Supreme Court of Minnesota, on the twenty-sixth day of July, 1898 (76 N. W. Rep., 254). It was there said by the majority of the court, against a vigorous dissent, that it had never been decided theretofore that if a stockholder had been omitted from the original action because a court could not acquire jurisdiction of him or for any other cause, that his liability could not be subsequently enforced against him by bringing him, or his property, into the original action, if found later within the jurisdiction of the court, or, if he could only be found, in another jurisdiction, by proceeding against him alone in an ancillary action in any other State in which he might be found if the comity of that State would permit. The court said there was nothing in the nature of the stockholders' individual liability, or the method of enforcing it, to prevent such enforcement, against him if omitted from the original action; and that there was nothing in the statute which justified the conclusion that if his liability was not adjudged in the original action because he was a non-resident, an ancillary action might not be brought against him thereafter, if the amount for which stockholders were individually liable had been determined in the original action. It further said the action required to be brought, by chapter 76, was the original action for the sequestration and distribution of the fund to be derived from stockholders' liability; that the decree entered therein was a final and conclusive determination of the amount (unless impeached for fraud) for which the stockholders were liable; and that as the amount and par value of the stock issued and outstanding was a matter of record, and readily

proven in any action, there was nothing to prevent the prosecution, after such decree was entered:—

> "Of an ancillary action in another jurisdiction by the Re-
> "ceiver appointed to collect and distribute its funds aris-
> "ing from the stockholders' liability in the original action,
> "or by any other party or person who may be appointed
> "by the court for that purpose, against any stockholder
> "who was not made a party to the original action, to col-
> "lect from him the amount of his liability, on account of
> "the debts of the corporation, for the benefit of all of the
> "creditors."

In dealing with an objection that a stockholder might assert he was not bound by the original procedure because his right of contribution could not be worked out in such ancillary action, the court said that if he were called on to pay only his *pro rata* share of the deficiency, treating all of the stockholders as solvent, the objection would fail; but that in any event his right to contribution in case he should be required to pay more than his share, as between himself and the other stockholders, was subordinate to the equity of the creditors, as he could secure such contribution by appearing in the original action.

The court lost sight of the fact that the proceedings by which the foreign stockholder was held concluded, had been terminated antecedently to any notification to him.

All said by the Minnesota court, in Hanson *vs.* Davison, concerning a right to proceed in another jurisdiction, against stockholders not made parties to the original proceedings, was *obiter dictum*. The question to be decided was whether an independent proceeding could be maintained in Minnesota against a stockholder non-resident at the time of the entry of the decree, who had become subsequently subject to the jurisdiction by reason of property to her belonging being found in the State. The lower court held that such original proceeding could not be maintained because the remedy, if any, was in the original action. This decision of the lower court was sustained. It was not in any way necessary to determine whether there could or could not be proceedings against for-

eign shareholders. All decided, and all that could be decided, was that there could be no independent proceeding within the State.

The court may have been induced to express, by an *obiter dictum*, views in direct violation of what had so long been supposed to be the Minnesota law, through the persuasive influences of the *amici curiæ*, viz., the Receiver now appealing to this court and his present counsel.

The *obiter dictum* would not be binding upon the lower courts of Minnesota, much less is it binding upon the courts of any other jurisdiction. Where it had previously been necessary to decide the question, the Minnesota Supreme Court had held that the statute prescribed one remedy, to be worked out in the District Courts of Minnesota against all the parties.

In no event is this court obliged, against reason, to the destruction of the rights of suitors, to follow the changing decisions of a State court in the interpretation of its statutes, where such change occurs after the rights of all parties have become fixed under earlier interpretations.

We submit, therefore, that even if the Supreme Court of Minnesota had *decided* in 1898, after the proceedings in the present suit in Minnesota had been concluded, that rights resulted therefrom which had been previously held not to exist, the present appellees would not be bound, and that this court would not be compelled to hold them bound, by the later construction.

The question we are now considering has been very elaborately and ably discussed by the Supreme Court of Wisconsin in Finney *vs.* Guy, 82 N. W. Rep., 595, decided 20th March, 1900, adversely to the theory that courts of other jurisdictions are obliged to follow the dictum in Hanson *vs.* Davison.

We need not, in this court, cite authority for the proposition that where a statute confers a right and gives a remedy, such remedy is exclusive. The only question we need discuss is, whether the Minnesota statute did prescribe a remedy.

The double liability of the stockholders, in case of insolvency, is not an asset of the corporation. The Receiver of

the corporation does not take the same. It is a right conferred upon the creditors to insist, within the limit of double liability, upon payment by stockholders, outside of the corporate assets, to such extent as there shall be a deficiency thereof. The right is that of the creditors, and the remedy can only be accorded to them under proceedings by them instituted. Culling from the Statutes of 1894, chapter 76, such provisions as are applicable, we find the following:—

"Whenever a creditor of a corporation seeks to "charge the directors, trustees or other superintending "officers of such corporation or the stockholders thereof, "on account of any liability created by law, he may file "his complaint for that purpose in any district court "which possesses jurisdiction to enforce such liability. "* * * The court shall proceed thereon as in other "cases; and, when necessary, shall cause an account to "be taken of the property and debts due to and from "such corporation, and shall appoint one or more Re- "ceivers. * * * If on the coming in of the answer "or upon the taking of such account it appears that such "corporation is insolvent and that it has no property or "effects to satisfy said creditors, the court may proceed "without appointing any Receiver to ascertain the respec- "tive liabilities of such directors and stockholders and en- "force the same by its judgment, as in other cases. * * * "Upon a final judgment in any such action to restrain "a corporation, or against directors or stockholders, the "court shall cause a just and fair distribution of the prop- "erty of said corporation and of the proceeds thereof to "be made among its creditors. In all cases in which the "directors or other officers of the corporation or the "stockholders thereof are made parties to an action in "which a judgment is rendered, if the property of such "corporation is insufficient to discharge its debts, the "court shall proceed to compel each stockholder to pay "in the amount due and remaining unpaid on the shares "of stock held by him or so much thereof as is necessary "to satisfy the debts of the company. If the debts of the "company remain unsatisfied, the court shall proceed to "ascertain the respective liabilities of the directors or "other officers and of the stockholders and to adjudge "the amount payable by each and enforce the judgment "as in other cases."

A provision is then made for bringing in all the creditors after notice and for precluding those who do not exhibit their claims and become parties to the action within six months from the first publication of the order.

No Receiver is to be appointed, excepting of the property of the corporation, including the debts due to the same. The words, "and when necessary * * * shall appoint one or "more Receivers," are applicable to a case in which there shall be corporate assets; not to one in which the creditor is proceeding to recover the double liability.

It will be observed that no power is given to one creditor to sue a stockholder and to recover an amount for his own individual benefit. The remedy must be for the benefit of all the creditors and there must be an ascertainment of the amount necessary to be paid, viz., so much of what is due on the shares of stock "as is necessary to satisfy the debts of the "company." It is necessary that the respective liabilities of the stockholders shall be determined and that there shall be an adjudging of "the amount payable by each."

We submit that the remedy prescribed by the statute is confined to one in which the requisite accounts and facts shall be taken and ascertained. There is provision for the entry of judgment in that proceeding alone. No provision is made for any subsequent proceedings in other and independent jurisdictions against stockholders not served in the original proceeding. There is to be one ascertainment of all the facts requisite to determine what must be paid by each stockholder. In that proceeding, and in that alone, judgment must be entered against the respective stockholders.

In addition to this, we submit that in the clearest possible language the Minnesota statutes have designated the only forum in which the remedy can be worked out, viz., "any "DISTRICT COURT which possesses jurisdiction to enforce "such liability." Under their terms, no other court has power to enforce the liability, saving a district court of Minnesota.

It is conceded by the appellant that no judgment can be entered in Minnesota against non-resident stockholders not

served. This being so, an independent proceeding upon his theory, is necessary, in a foreign jurisdiction. The right of such jurisdiction to enforce the liability is barred by the provision of the statute, limiting jurisdiction over the remedy to a district court of Minnesota.

III. Inasmuch as the appellees were not parties to the proceedings in Minnesota, they were not bound by the same.

It is not necessary for the purpose of sustaining this proposition, to determine whether or not the method prescribed by the Minnesota statutes for enforcing the double liability of stockholders was, or was not, exclusive.

It is conceded that, as a result of those proceedings, no decree was entered against the appellees. The assistance of the court of another jurisdiction was necessary and certain facts were required to be found, or held to have been properly found, before judgment could be entered in such other court against them. The question under this head, therefore, is whether or not, under the settled principles of jurisprudence, any court can enter a decree which requires it to assume as conclusive, certain facts which can only be found judicially. In other words, the appellees were only liable after certain facts had been judicially determined. Were they concluded, by a judicial determination of such facts, made in proceedings in which they were not parties?

No one pretends, so far as we can judge, in the absence of the appellant's brief, with which as yet we have not been favored, that the Minnesota statutes specially provided a remedy in any other courts than those of Minnesota.

In the '*obiter dictum*' in Hanson *vs.* Davison, it was only suggested that there was nothing in such statutes, which precluded a court in another jurisdiction from giving ancillary relief.

We submit, therefore, that the question, not one of interpretation of Minnesota statutes, but of general law, is whether a court can enter a decree against a defendant, not liable unless

certain facts, prerequisite to the liability, have been judicially ascertained, because such facts were found in another judicial proceeding, to which he was not a party?

The Circuit Court of Appeals of the Third Circuit was of the opinion that a decree could not be entered under such circumstances. The two Circuit Court judges of the First Circuit Court of Appeals were of a like opinion. Two of the district judges, sitting in the latter court, were of the contrary opinion.

The dissenting opinion of Judge Colt in Hale *vs.* Hardon, 95 Fed. Rep., 777, and that of Judge Putnam in 89 Fed. Rep., 283, have discussed the question with so much learning, power of reasoning and elaborateness, that nothing remains to be said in support of the negative view. We refer to those opinions as expressing, far better than we can, the views upon which we rely.

In the very elaborate opinion written by Judge Aldrich, an affirmative conclusion is reached, mainly because of the lack of any remedy against non-resident stockholders unless that view was taken. It is said by Judge Aldrich, with truth, that if the ancillary jurisdiction be not sustained, no effectual relief can be obtained against non-resident stockholders.

We submit, however, that the question is not whether a remedy ought to be given in enforcement of the statutory right, but whether such remedy has been given.

It is for the legislature, not for the judiciary, to provide adequate remedies for rights conferred by statute. It is necessary that defects, or insufficiencies, in legislation, should be corrected by the only body which can legislate.

If the only remedy for insufficient legislation, is the exercise of an ancillary jurisdiction which destroys the right of every defendant to have adjudicated, in a case in which he is a party, all facts necessary to judgment, it is far better that such exercise shall be denied.

The legislatures of many of the States have now devised an amply sufficient remedy for the statutory duties imposed upon stockholders. We understand that in Minnesota, a statute recently passed, deals adequately with the subject.

At the time of the enactment of the earlier Minnesota statutes of 1894, three ways were open to legislative prescription in enforcing the double liability of stockholders, viz., (1) the grant of a right to any creditor to proceed against any stockholder; (2) the grant of a right to creditors, in one proceeding, to determine the facts prerequisite to the double liability, and to enforce such right against parties thereto by judgment; and (3) the grant of a right to some person, directed to be appointed for the purpose, to have determined, in one jurisdiction, in a mode therein specified, all the facts prerequisite to the ascertainment of the specific liability of each stockholder and, thereafter, to proceed in any jurisdiction, for the enforcement of the liability thus ascertained.

We concede that it would be entirely within the constitutional power of a State to enact, in the case of corporations by it created, that stockholders should be subject to a double liability if, in some proceedings by it prescribed, resort thereto should be ascertained to be necessary. Any stockholder accepting the benefit of the incorporation, by becoming the owner of shares, would be bound to meet such double liability whenever it should be thus ascertained.

We contend, however, that if the statute does not prescribe an ascertainment of the liability in proceedings other than those against the stockholder himself, but directs that he shall be liable only when certain prerequisite facts have been ascertained, he has a right to have such facts determined, in accordance with the usual rules which govern the determination of liabilities.

Had the Minnesota Legislature provided remedy (1) directing that after a creditor had obtained judgment against a corporation, which he was unable to collect because of its insolvency, he might proceed against any stockholder to fix him with double liability, there would have been no difficulty in obtaining judgment in any jurisdiction against any stockholder, after judgment had been entered against the corporation. In such event, the only prerequisite to fixing the liability would have been the entering of judgment against the corporation. Such judgment, when obtained, would have

been conclusive, saving in cases of fraud. Some States, notably Kansas, did provide this remedy; but it was found to result in injustice, because it enabled a favored creditor to collect the whole of his debt, whilst another could collect nothing.

The State of Minnesota adopted remedy (2). It provided no special method of ascertaining, outside of proceedings against the stockholders, the facts prerequisite to a judgment against them for the double liability. In requiring the ascertainment of these facts, it made it their right to have the determination made in proceedings to which they were parties. It is impossible to read the Minnesota statute, without reaching the conclusion that a proceeding was contemplated in which every person interested would be heard.

It is an insufficient answer to say that the non-resident stockholder *may* appear in the Minnesota proceedings. He is not obliged to appear, and, in the present case, the proceedings terminated in what is called "a final decree," before he was aware they had been commenced. Whether he might or might not have appeared, if he had had notice, it is sufficient to say he did not appear and that he had no notice so to do.

It is not necessary for us, in sustaining the proposition we are discussing, to maintain that if a stockholder is made liable to pay a debt of a corporation in part or in whole, he is not bound conclusively, in the absence of fraud, by the ascertainment, as against the corporation itself, of the fact, and the amount, of the debt. We admit that under such circumstances he is bound. The debt for which he is liable is that of the corporation, and the corporation is conclusively bound as to the fact of the debt, when the same has been judicially determined, by proceedings against it.

In the present case, however, under the Minnesota statutes, facts other than those of the amount of the indebtedness of the corporation are to be judicially determined before judgment can be entered against a stockholder upon his double liability. An account must be taken of the property and debts due to and from the corporation. It must be determined that the latter is insolvent and that "it has no property or

"effects to satisfy" the creditors. The respective liabilities of the different stockholders must be ascertained. The court must compel each stockholder to pay so much of his double liability "as is necessary to satisfy the debts of the company." The respective liability of the stockholders and the amount payable by each must be ascertained. In the present proceeding, the corporation and the Receiver, together with some twenty resident shareholders, were made parties defendant. The corporation and the Receiver made default. The Receiver had no possible interest in the controversy. Whether the creditors did or did not succeed was immaterial to him. The amount which might be recovered would not be an asset which would pass to him. His duty was confined to an administration and distribution of other assets.

The purpose of the proceeding was not to recover judgment against the corporation. True, the liabilities of the corporation were to be ascertained, but that was merely for the purpose of ascertaining the amount of judgment to be entered against each stockholder. The prayer of the bill, as filed in Minnesota, was, not that judgment should be entered against the Northwestern Guaranty Loan Company, but that judgment should be entered against the stockholders for such liability of each as should be ascertained.

We submit that there is a difference in legal effect between a suit brought against a stockholder to compel the payment of a debt of a corporation, after such debt has been judicially fixed by judgment against the corporation, and a suit brought against the stockholder for the purpose of ascertaining the amount to be paid by him in liquidation of the corporate indebtedness. In the first case, the judgment against the corporation finally settles the question of its liability, not only as against itself, but as against every person interested therein. In the last case, the corporation is not interested to resist a decree, fixing the existence of the amount of indebtedness, where the sole purpose of such fixing is, to collect the amount thereof from third persons—*i. e.*, from stockholders subject to double liability.

As we have said, however, there was a judicial duty to de-

termine, not merely the amount of the indebtedness of the corporation, but the value of its assets; the amount of shares held by each stockholder and the amount necessary to be paid by each stockholder to satisfy the debts of the company.

The Receiver was not interested in the determination of the amount of the liabilities, or of the value of the assets, because the effect of the proceeding was not to interfere in any way with the assets which he possessed. Both corporation and Receiver might have been willing that excessive judgments should be entered against the stockholders. Be this as it may, in no event could either suffer from their entry. Each and every stockholder sought to be held liable, was vitally interested, not only in the determination of the indebtedness of the corporation, but in the correct ascertainment of the assets and of their value, and of the amount and *personnel* of the contributing shareholders.

In the present case, the indebtedness was alleged to be so far in excess of the assets and of the par value of the outstanding shares, that it seems probable no controversy made in the interest of the shareholders, would have resulted in reducing the indebtedness and in swelling the value of the assets to a sufficient extent to relieve from the double liability; but, the question as to the legal effect of proceedings like those in Minnesota cannot be made to depend upon the probabilities in any particular case, of a successful defense. A principle must be established which will govern all cases.

It is obvious that, in all, it will be the interest of the creditors to establish the largest possible deficiency and to secure a decree charging each holder with the largest possible amount within the statutory limitation. The plaintiffs, therefore, in all cases, will have an interest directly in opposition to that of the shareholders, but it may well be, in many cases, that there will be no parties defendant who will be able, or will be sufficiently interested, to make the best possible defense. Yet, every stockholder, whether served or not, the appellant contends, will be bound by the finding of the Minnesota court that each share must pay the designated sum. It is vitally important to him, therefore, not only that the indebted-

ness shall not be found to be greater than it is, but that all assets shall be disclosed, that these shall be fully and properly valued, that stockholders of financial ability shall not be allowed to escape and that the amount of issued shares, subject to contribution, shall be properly determined.

As we have said, none of these questions concern the corporation or the Receiver. As to all they are indifferent; as to some, their interests may be opposed to those of the stockholders.

By collusion, or for other reasons, the creditors may omit to serve a resident stockholder, who will thus be permitted to escape. For like reasons, they may make defendants those they will allege to be stockholders, who may be willing to be found legally liable, when not financially responsible, for the purpose of shielding real parties. Resident stockholders may secure findings that they are not holders, or that they have paid all due by them, in the absence of non-resident stockholders, who, if present, might furnish contradictory evidence.

As each stockholder is bound, if the appellant's theory be correct, by the result of the proceedings in Minnesota, it is his right to be confronted with the testimony, to cross-examine witnesses, to object to the admission of what is not competent and to make that defense which always results where the defendant has an interest in the result.

How was it possible for the Circuit Court of Pennsylvania to know whether, in the Minnesota proceeding, a genuine defense had been made and that everything pertinent to a proper decision had been offered? It appears (Record, page 42) that the Loan Company and its Receiver, and many of the stockholders served, made default. While it is said a few of these stockholders made answer, the answer itself does not appear. Whether the resident stockholders were or were not financially able to respond, and whether they did or did not make such defense as could, and would, have been made by parties really interested, does not appear; nor does it appear whether the resident stockholders did or did not have any interest, direct or indirect, making it not undesirable that a large deficiency should be established as against non-resident shareholders.

All that does appear is, that with, or without, an adequate defense being made by those served whose interests were several, not joint, a fact was established judicially which it is claimed is conclusive as against the appellees, without their having had an opportunity to take part in the litigation.

The appellant must contend that if the Minnesota proceedings finally determined the amount to be paid by each stockholder, such proceedings will be valid if conducted against the corporation and Receiver alone, without the joinder of any shareholders. Is it conceivable that a fact, prerequisite to the liability of a shareholder, can be found against the latter in proceedings in which the parties defendant will be not interested if the creditors include those only who have no interest therein and those who will in no way be affected adversely by the result?

If no shareholders are served, either through design, or for lack of ability to find them, the proceedings, as appellant, to be consistent, must contend, conclude them. Persons may be served under the assertion they are shareholders, who may prove they are not, thus leaving the shareholding body entirely unrepresented in the proceedings. Responsible parties may be named as shareholders, defendants, who may dispute the fact of their liability and who may establish its non-existence. In such event, though there will be defendants other than the corporation and its Receiver, such other defendants will not be interested in the amount with which each stockholder will be charged, but solely in the establishment of his own non-liability.

Under a statute, therefore, which contemplates a judicial determination of facts as against the shareholders, such facts may be established without any shareholder being made party. Is any court, under any principle of comity, compelled to enter its decree against a defendant, because some other court found against him a fact in proceedings where he was not made a party, in a case where his liability depended solely on such fact being judicially determined? The Minnesota statutes gave to every stockholder a right to a judicial determination of every fact necessary to be found in fixing the amount to be

paid by him. They devised no specific proceedings against parties other than himself during the course of which the fact of the amount should be ascertained. They gave him a right, which would have been denied had the Circuit Court of Pennsylvania held him bound, if a stockholder, to pay the amount per share decreed by the Minnesota proceedings.

As Judge Colt points out, the non-resident shareholders, under the appellant's theory, will be put in a much worse position than the resident shareholders, because they will be entitled to no contribution, if compelled to pay under a Pennsylvania decree. They will be unable to force the Minnesota Receiver to proceed against the Minnesota shareholders, under the Minnesota proceedings, by way of execution process. The indebtedness can be collected from Pennsylvania holders without Minnesota contribution, if the authorities in Minnesota shall feel disposed to favor the resident shareholders.

As the Minnesota statutes made, as a prerequisite to a stockholder's liability, a judicial ascertainment of the amount necessary to be paid by the holder of each share, there can be no valid judgment, compelling a shareholder to pay any amount, until he has been afforded an opportunity to be heard, not through a corporation or Receiver uninterested in the result, nor through some other stockholder who may not be interested, or may not be able to defend, but in person, through his own counsel.

The cases well reasoned, and well decided, which hold stockholders bound to pay unpaid installments though ordered to be assessed under proceedings in which they were not parties, have no bearing. Each stockholder of a corporation agrees with it that when by it demanded, unpaid installments will be liquidated. If the corporation becomes insolvent, its Receiver, under the order of the court, may do what would have been the duty of the corporation, viz., require the performance of the contract with the corporation. If the corporation itself demands such performance, it is no defense to aver it does not need the money. The contract is to pay when demanded. In case of insolvency, it is immaterial whether the whole amount of assessment is, or is not, requisite,

for payment of debts, inasmuch as the condition of payment is not the establishment of such indebtedness. In the present case, however, the contract of the stockholder is to pay only if it shall be judicially determined in judicial proceedings that a certain amount is necessary to be paid by each stockholder, because the indebtedness exceeds, in a designated sum, the assets correctly valued, and because there are only a specific number of stockholders liable to respond.

Nothing demonstrates the weakness of the appellant's contention better than the failure of those who have asserted it, to support it by sound reasoning.

In Hale *vs.* Hardon, 95 Fed. Rep., 757, Judge Aldrich has done everything possible in this respect; but, we venture to suggest, his argument does not carry with it conviction. He says:—

> "As said, we fail to discover any reasonable distinction "between the rule of conclusiveness, in respect to a judg- "ment for indebtedness against a going corporation "represented by directors, which is established by re- "peated authorities, and a judgment or decree against "an insolvent corporation represented by a general "Receiver, who is the *quasi* judicial successor of the cor- "poration and its interests, and whose duty it is, under "the power and authority of the court, to protect and "care for the corporate estate, and, as an incident thereto, "to resist unwarrantable claims against the corporation, "in the interest of all the creditors and all the stock- "holders. In the one case the stockholder is represented "by the officers of the corporation and in the other by "the general Receiver, who, under the authority and the "decree of the court, has become the lawful and con- "trolling successor of the corporation and its interests."

Is there no reasonable distinction between a judgment for indebtedness against a going corporation represented by directors, and a judgment or decree, not "against an insolv- "ent corporation represented by a general Receiver," but against stockholders in favor of creditors seeking to compel the former to pay to them, out of their individual assets, a sum of money? It is true that the general Receiver of the corporation is "the *quasi* judicial successor of the corpora-

"tion and its interests," but it has been expressly held in Minnesota that such Receiver has no interest in a fund owing, not by the corporation, but by its shareholders, to its creditors. There is no duty whatever upon the general Receiver "to protect and care for" the stockholders. "The "corporate estate does not include the stockholder's liability "to the creditors." The Minnesota proceeding is not a "claim against the corporation," warrantable "or unwarrant-"able." It is a claim against the stockholders in which neither corporation nor Receiver has any interest. It is no part of the duty of the "general Receiver," to defend. Upon what principle could he demand reimbursement out of the funds in his hands, of fees paid to his counsel for representing him in such a proceeding? The fund of which he is a Receiver would not be affected, favorably or unfavorably, by any possible result thereof.

We have made few citations during the course of this argument, believing the principles for which we contend to be elementary. We know of no decisions affecting them adversely. If citations be necessary they can be found in the cases to which we do refer, where every pertinent authority is cited by the learned judges who have decided them and who have exhaustively discussed everything involved in this appeal.

IV. An action cannot be maintained in the courts of one jurisdiction by a Receiver appointed in another jurisdiction merely to bring suit, not clothed with title to the *rem* in controversy.

In support of this contention we can make no better argument than that embodied in the decision by the Circuit Court of Appeals of the Second Circuit in Hilliker *vs.* Hale, 117 Fed. Rep., 220. It was there held that the appellant, who sued a New York stockholder, was not entitled to maintain his suit.

Judge Dallas in the Third Circuit in Wigton *vs.* Bosler, 102 Fed. Rep., 70, quoted approvingly what was said upon the subject in High on Receivers, sections 239, 241:—

"Upon the question of the territorial extent of a Re-
"ceiver's jurisdiction and powers, for the purpose of in-
"stituting actions connected with his receivership, the
"prevailing doctrine, established by the Supreme Court
"of the United States and sustained by the weight of
"authority in various States, is that the Receiver has no
"extra-territorial jurisdiction or power of official action,
"and cannot go into a foreign State or jurisdiction and
"there institute a suit for the recovery of demands due
"the person or estate subject to his receivership. His
"functions and powers, for the purposes of litigation, are
"held to be limited to the courts of the State within
"which he was appointed, and the principles of comity
"between nations and States, which recognize the judicial
"decisions of one tribunal as conclusive in another, do
"not apply to such a case, and will not warrant a Re-
"ceiver in bringing an action in a foreign court or juris-
"diction. * * * While, as is thus seen, the courts
"have generally denied the Receiver's extra-territorial
"right of action as a question of strict right, yet it has
"sometimes been recognized as a matter of comity.
"Thus, it has been held that Receivers of a foreign cor-
"poration, appointed in other States, might sue in New
"York in their official capacity, in cases where no detri-
"ment would result to citizens of the latter State; the
"privilege of thus suing being regarded as based rather
"upon courtesy than upon strict right and the courts
"declining to extend their comity so far as to work det-
"riment to citizens of their own State who have been in-
"duced to give credit to the foreign corporation."

It is not necessary for us to quote from the decision in Hale *vs.* Hardon, 95 Fed. Rep., 748, maintaining the opposite conclusion. The appellant will probably do that. In support of our contention, however, we appeal to the reasoning in the dissenting opinion of Circuit Judge Colt and in that of Judge Putnam in the Circuit Court. It is impossible for us to add anything thereto.

It does not necessarily follow that no Receiver may institute proceedings in a foreign jurisdiction. Where he is clothed with the title to a *rem*, by virtue of a statute or of an assignment, or of a decree, he may, in the way of maintaining and enforcing his title, do whatever is incident to ownership.

The case in which this court has dealt with the subject, in favor of the right of the Receiver, is one in which the Receiver succeeded to a dissolved corporation and to its property, taking by virtue of the statute the place of the dissolved corporation. Proceedings instituted by him for the purpose of recovering the rights with which he was vested, were maintainable in any jurisdiction, irrespective of the place of his appointment.

In the present case, the Receiver was clothed with no title. There was a right in creditors of an insolvent corporation to sue, upon a double liability, stockholders of that corporation. This right was vested in the creditors themselves. No statute vested it in any Receiver. They brought suit against certain stockholders who were served with process. They claimed, in addition to this, that other stockholders in other jurisdictions who could not be served, were liable to pay them certain amounts.

The court appointed a Receiver, not of an asset within, but beyond, its jurisdiction, viz., an indebtedness by citizens of other States. The Receiver thus appointed, is "authorized and em-"powered to take any and all necessary or appropriate steps "or proceedings against the non-resident stockholders of said "defendant, Northwestern Guaranty Loan Company, against "whom no personal judgment herein has been ordered for the "enforcement and realization upon their stockholders' liability, "and to that end said Receiver be and hereby is authorized, "directed and empowered to institute and prosecute all such "actions or proceedings in foreign jurisdictions as may be "necessary or appropriate to this end." It decreed that it would retain jurisdiction of the case "until the adjustment of "all and several the rights and liabilities of the respective "parties hereto."

This Receiver was also authorized, *quâ* parties against whom judgment was entered, resident shareholders, "to take any and "all appropriate or necessary steps or proceedings for the pur-"pose of collecting said judgments and all or any thereof, "and to hold the moneys and funds so collected subject to the "further order of this court in the premises." It was ordered

that "execution upon all or any of said judgments shall, upon "the application of said Receiver, be issued in the name of the "above-named plaintiff" (the creditor corporation), "and that "any and all funds thereon realized shall be paid to said Re- "ceiver, to be held by him and disbursed by order of this "court as hereinbefore provided."

A Receiver was therefore appointed to aid the court in collecting an amount of money, beyond its control, which could only be collected through the court of another jurisdiction. No title was vested in him. He was made the collecting agent of the court for the purpose of bringing into it a fund to be thereafter distributed by it. There was no contractual relation between the appellees and the Receiver. No statute made it the duty of the appellees to defend a suit by such Receiver.

We submit that no court has authority to raise a fund, thereafter to be distributed by it, where such fund can only be raised by proceedings in a foreign jurisdiction to be instituted by its Receiver. A court has power to collect within its own jurisdiction. So far as regards a fund within its control, it may appoint a Receiver thereof. Where, however, the fund can only be obtained by judicial proceedings elsewhere, it has no control over the same, and, *ex necessitate*, has no power to compel any other court to collect the same for it, under proceedings to be instituted by its Receiver.

We are dealing, not with the powers of Receivers specially constituted by statute to accomplish a certain purpose as against stockholders who shall become members of a corporation under its provisions, but with the rights of Receivers, as they exist generally under any comity heretofore recognized.

We deem it unnecessary to do more than to cite the decision of this court in Booth *vs.* Clark, 17 Howard, 322, 331, 332, 335, in which it said, what has never since been qualified:—

> "The Receiver is a representative of the court and may, "by its direction, take into his possession every kind of "property which may be taken in execution and also "that which is equitable, if of a nature to be reduced into

"possession. * * * He is an officer of the court. "His appointment is provisional. * * * It is the "court itself which has the care of the property in dis- "pute. The Receiver is but the creature of the court; "he has no powers except such as are conferred upon "him by the order of his appointment and the course "and practice of the court. * * * Indeed, whatever "may be the Receiver's rights under a creditor's bill, to "the possession of the property of the debtor in the "State of New York, or the permissions which may be "given to him to sue for such property, we understand "the decisions of that State as confining his action to the "State of New York. * * * Our industry has been "tasked unsuccessfully to find a case in which a Receiver "has been permitted to sue in a foreign jurisdiction for "the property of the debtor. So far as we can find, it "has not been allowed in an English tribunal; orders "have been given in the English Chancery for Receivers "to proceed to execute their functions in another juris- "diction, but we are not aware of its ever having been "permitted by the tribunals of the past. We think that "a Receiver has never been recognized by a foreign "tribunal as an actor in a suit."

The appellant, in the lower court, contended that what was said by this court, as above quoted, has become obsolete and that jurisdiction in the matter of powers of Receivers, has since been so extended, that a different rule now prevails. For this claim, we find no warrant in the decisions of this court. We are aware of no enlargement of ideas to such extent as compels one court, by its decree, to transfer a fund owing by some one within its jurisdiction, into the court of another jurisdiction, upon the order of the latter, thereafter to be dealt with by it. It is easier to talk about a march of principles than to prove such march by citations.

In Relfe *vs.* Rundle, 103 U. S., 225, this court, speaking through Mr. Chief Justice Waite, was careful to say that Relfe, the Receiver, was "not an officer of the Missouri State "Court, but the person designated by law to take the prop- "erty of any dissolved life insurance corporation of that "State, and hold and dispose of it in trust for the use and "benefit of creditors and other parties interested."

The effect of the Relfe case, which made no reference to Booth *vs.* Clark because it was not affected thereby, was carefully guarded by these words:—

> "The law which clothed him with this trust was, in "legal effect, part of the charter of the corporation. He "was the statutory successor of the corporation for the "purpose of winding up its affairs. As such he repre- "sents the corporation at all times and places in all mat- "ters connected with his trust. He is the trustee of an "express trust, with all the rights which properly belong "to such a position. He is an officer of the State, and "as such represents the State in its sovereignty while "performing its public duties connected with the wind- "ing up of the affairs of one of its insolvent and dissolved "corporations. His authority does not come from the "decree of the court, but from the statute. He appeared "in Louisiana, not by virtue of any appointment from the "court, but as the statutory successor of a corporation "which the court had in a legitimate way dissolved and "put out of existence. He was, in fact, the corporation "itself for all the purposes of winding up its affairs.
>
> "We are aware that, except by virtue of some stat- "utory authority, an administrator appointed in one State "cannot generally sue in another, and that a Receiver ap- "pointed by a State court has no extra-territorial power."

The Minnesota court, it will not be pretended, had jurisdiction over the fund, *i. e.*, the indebtedness owing by the Pennsylvania shareholders. If it had no jurisdiction over the fund, it had no power to appoint an officer to control the same. The Receiver was a parasite, with power to deal with nothing over which his creator had no control.

In conclusion, we meet the suggestion of Judge Aldrich that where there is a right, the court will give a remedy, with the assertion that where a right is conferred by statute, without a remedy being afforded, in a case where no such remedy is given by the general law, the right cannot be enforced.

The Legislature of Minnesota was bound to know its law was inadequate, in the way of providing a remedy against non-resident stockholders. It was its duty to confer such remedy.

It had no right to demand that courts of justice should legislate where it had failed.

In its *obiter dictum*, the Supreme Court of Minnesota did not say that the Statutes provided for the appointment of a Receiver with authority to collect in other jurisdictions. It said (Hanson *vs.* Davison, 76 N. W. Rep. 254, 256):—

> "Chapter 76, Gen. St. 1878, indicates and regulates to "some extent the remedy, leaving the court the duty of "making the remedy effectual by an application of the "principles of equitable procedure. This statute pre- "scribes the exclusive remedy only to the extent that an "equitable action of the character therein indicated must "be first instituted for the enforcement of the liability of "stockholders. * * * There is nothing in the statute "which justifies the conclusion that, if a stockholder's "liability is not enforced in the original action because "he is a non-resident, an ancillary action may not be "brought against him alone after the amount for which "stockholders are individually liable has been determined "in the original action."

It was upon the general principles of equity, that the judge who uttered this *obiter dictum* relied, for the right of a Receiver to transfer into the court of one jurisdiction, by suit in another, funds which were under the control of the latter.

In Glen *vs.* Marbury, 145 U. S., 511, this court held that a demand for stock assessment must be enforced, not by a Trustee, nor by the court, but by the person or corporation to whom the promise of the stockholder was made.

This court, speaking through Mr. Justice Gray, in Porter *vs.* Sabin, 149 U. S., 479, said:—

> "When a court exercising jurisdiction in equity ap- "points a Receiver of all the property of a corporation, "the court assumes the administration of the estate; the "possession of the Receiver is the possession of the "court; and the court itself holds and administers the "estate, through the Receiver as its officer, for the bene- "fit of those whom the court shall ultimately adjudge "shall be entitled to it."

In other words, when property is within the jurisdiction of the court it has a right, in a proper proceeding, to take possession of the same through its Receiver. Such possession is the possession of the court. The Receiver cannot receive anything which the court does not control. The purpose of his appointment is the conservation, collection and administration, of property in the court's possession or custody, or over which it has a right of possession or custody.

JOHN G. JOHNSON,
For Appellees.